

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition No.11074 of 2020
& W.M.P.No.13477 of 2020

R.Jayanthima

... Petitioner

-Vs-

1. The Assistant Executive Engineer
O and M Sholingallur CEDC/ South II
Tamil Nadu Generation and Distribution
Corporation Ltd Chennai.
2. The Assistant Engineer/ O and M
Perungudi/South Tamil Nadu
Generation and Distribution Corporation Ltd
Chennai.

... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the respondents herein to restore the electricity service connection in S.C.No 265-005-1556 to the petitioner's premises at Plot No.113 Customs Colony Duraipakkam Chennai by permitting the petitioner to pay the sum of Rs.4,51,783/- (Rupees Four Lakhs Fifty one Thousand Seven Hundred Eighty Three Only) as per 1st respondent order dated 18.07.2019 in 20 installments.

सत्यमेव जयते

For Petitioner : Mr.P.Suresh Babu

For Respondents : Mr.P.Gunaraj, Standing Counsel

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O R D E R

Mr.P.Gunaraj, learned Standing Counsel takes notice for the respondents.

2. On consent given by either side, the main writ petition itself has been taken up for final hearing.

3. This Writ Petition has been filed for the issue of Writ of Mandamus directing the respondents to restore the Electricity Service Connection in the petitioner's premises and also permit the petitioner to pay the amount that is demanded through assessment order dated 18.07.2019 in 20 (twenty) instalments.

4. The case of the petitioner is that she is the owner of the property. The petitioner had leased out the property and it is stated that the tenants were involved in committing theft of electricity, which resulted in disconnection of the electricity connection. A provisional assessment order was also passed on 26.02.2019. The petitioner made her objections and ultimately a final order came to be passed on 18.07.2019 to the effect that the Electricity Department incurred a loss of a sum of Rs.4,51,783/- and through the said impugned order, the petitioner was directed to pay the said sum.

5. Learned counsel for the petitioner submitted that the petitioner had nothing to do with the alleged theft of electricity and it was done by the tenant, who has subsequently vacated from the property. The petitioner wanted to live in the said premises, but however there was no electricity connection and the petitioner is asked to pay the entire amount, failing which the electricity connection will not be restored. Learned counsel for the petitioner submitted that the petitioner does not have the financial wherewithal to make the entire payment and therefore she made a representation to the respondents to permit her to pay the amount due in twenty installments. Since the same was not considered, the present writ petition has been filed before this Court seeking for appropriate direction.

6. Mr.P.Gunaraj, learned counsel appearing on behalf of the respondents submitted that the request made by the petitioner cannot be acceded by the department since the Supply Code does not permit the receipt of the amounts in installments. Learned Standing counsel submitted that the final assessment order was passed in the month of July 2019 and till date the petitioner has not even paid a single paise to the Department and therefore there are no bonafides on the part of the petitioner to seek for payment of the amounts due in installments. Learned Standing Counsel therefore submitted that the petitioner must be directed to pay the entire amount and only thereafter the electricity connection will be restored in the premises.

7. This Court has carefully considered the submissions made on either side and the materials placed on record.

8. The petitioner had leased out the premises and the tenants, who were in occupation of the property had indulged in the theft of electricity. Therefore, the petitioner had

absolutely no control over all that took place in the premises and it is the tenants, who had indulged in such an illegal act. The petitioner had not challenged the final assessment order passed on 18.07.2019 and the only request made by the petitioner is to permit her to pay the amount in installments.

9. This Court had already dealt in detail with regard to the liability of the owner of the premises, where theft of electricity has been committed by a tenant. This Court held that the theft of electricity is an individual illegal act which can only put against the person who has actually committed theft and that is the reason why this Court held that the compounding fee and penalty can be collected only from the person who committed the theft and not from anyone else. Useful reference can be made to the judgment in the case of "V.B.R.Menon -Vs- The Assistant Executive Engineer O&M, Porur South" reported 2016(2) CWC Page 573. Therefore, it is clear that insofar as theft of electricity is concerned, it is an act committed with the requisite mens rea by the person who committed it. The liability in terms of penalty or compounding fee cannot be shifted to the owner of the property.

10. In the instant case, a reading of the provisional assessment order and the final assessment order shows that the amount collected from the petitioner is the loss that was caused to the Electricity Board due to illegal tapping of electricity. This is more in the nature of a liability that has to be fastened upon the property and the owner of the property. A sum of Rs.4,51,783/- has been assessed to be payable by the petitioner.

11. In view of the above, this Court is inclined to dispose of this Writ Petition by issuing the following directions.

- a) The petitioner is directed to pay 30% of the total demand made in the final Assessment Order dated 18.07.2019 to the first respondent.
- b) Immediately on such payment, the first respondent shall restore the electricity connection to the petitioner's premises.
- c) The petitioner is further directed to pay the balance 70% of the final assessment made by the first respondent in ten (10) equal monthly installments starting from October 2020. This payment shall be made along with the current consumption bill raised by the first respondent.
- d) If the petitioner fails to make the payments as directed by this Court, the first respondent is at liberty to disconnect the electricity and take action for the recovery of the amount, without any further

reference to this Court.

11. The Writ Petition is disposed of in the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Assistant Executive Engineer
O and M Sholingallur CEDC/ South II
Tamil Nadu Generation and Distribution
Corporation Ltd Chennai.
2. The Assistant Engineer/ O and M
Perungudi/South Tamil Nadu
Generation and Distribution Corporation Ltd
Chennai.

+1 cc to Mr.P.Gunaraj, Advocate Sr.No.27579

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