IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. RFA-445-2021(O&M)
Date of Order: 21.12.2021

PUNJAB STATE POWER CORPORATION LTD. AND ANR
..Appellants

Versus

KULWINDER SINGH
..Respondent

2. RFA-2330-2021(O&M)

DAKSHIN HARYANA BIJLI VITRAN NIGAM AND ANR.
..Appellants

Versus

VIDYAWATI
..Respondent

CORAM: HON'BLE MR. JUSTICE ANI LKSHETARPAL

Present: Mr. Himmat Singh, Advocate
for the appellant(s) (in RFA-445-2021)

Mr. Baldev Raj Mahajan, Senior Advocate
with Mr. Madhur Singh and Ms. Nikita Goel, Advocates
for the appellant(s) (in RFA-2330-2021)

Mr. Rajinder Sharma, Advocate
for respondent (in RFA-445-2021)

Mr. Shiv Kumar, Advocate
for respondent. (in RFA-2330-2021)

ANIL KSHETARPAL, J.

1. This judgment shall dispose of RFA-445-2021 (Punjab State Power Corporation Limited and another Vs. Kulwinder Singh) & RFA-2330-2021 (Dakshin Haryana Bijli Vitran Nigam and another Vs. Vidyawati). A short but an interesting question arises for adjudication. It is with respect to the scope of jurisdiction of a Special Court constituted under the Electricity Act, 2003. Considering the nature of question, this Court proceeds to decide the question without requisitioning the lower Court's record. Whether the Special Court constituted under Section 153 of the

Electricity Act, 2003 (hereinafter referred to as "the 2003 Act"), has the jurisdiction to entertain, try and decide the civil suit even when no criminal trial is pending under the offences under Section 135 to 140 and Section 150 of the 2003 Act? Although, both these appeals are arising from two separate judgments passed by the Special Court however, the question as already noticed, is common and the facts are not of much significance. However, in brief the facts have been noticed from RFA-2330-2021. The respondent Vidyawati filed an application under Section 154 read with Section 135 of the 2003 Act, seeking a decree of declaration that the impugned LL1 Checking Report No.9/1697, dated 21.11.2018, and the order of assessment demanding a sum of Rs.93,918/-, are unlawful, illegal and liable to be set aside. She has a domestic electrical connection which was inspected by an inspecting team on 21.11.2018, and a false LL1 Checking report was prepared. On that basis, the respondent has been called upon to pay a penalty of Rs.93,918/-. The appellant (defendant in the suit) claims that the respondent was committing a theft of energy. On checking the premises by a team of officials, it was found that the respondent was drawing power supply from main PVC joint through a flexible cable wire. It was alleged that it was a case of direct theft and the photographs of the said theft have been taken during the inspection and the cable and meter have also been seized. The Special Court vide a judgment dated 16.03.2021, has declared that such a checking report and the order of assessment demanding the amount as penalty is illegal. The issue on the maintainability of the petition before the Forum was also framed, however, the Special Court held that the petition is maintainable because it is established that the plaintiff is a consumer of the electricity.

2. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused both the paper books.

3. Sh. Baldev Raj Majahan, Senior Advocate, while drawing the attention of the Court to Section 153, 154, 155, 156 of the 2003 Act, contends that in Part XV of the 2003 Act, the Parliament has made a provision for the constitution of a Special Court for the purposes of providing a speedy trial of the offences referred to in Sections 135 to 140 and Section 150 of the 2003 Act. While referring to Section 155 of the 2003 Act, he submits that the Special Court exercises the powers of a Court of Sessions. He contends that no power of District Judge has been conferred upon the Special Court. While explaining the difference, he has pointed out that the Presiding Officer of the District and Sessions Court exercises civil jurisdiction as a District Judge, whereas, the same Presiding Officer exercises jurisdiction over criminal matters as a Court of Sessions. He further relies upon the judgment passed by the Supreme Court in ***North Delhi Power Limited Vs. Devinder Singh and another, Civil Appeal No.20842 of 2017, decided on 04.12.2017***. In RFA-445-2021, Sh. Himmat Singh, learned counsel representing the appellant-Punjab State Power Corporation Limited, has contended that the Special Court has been constituted only for the purpose of a speedy trial of the offences mentioned in Sections 135 to 140 and Section 150 of the 2003 Act. He contends that the enabling power of the Special Court under Sub-Section 5 of Section 154 of the 2003 Act, is incidental to determine the civil liability particularly when the Special Court is already seized of the matter with regard to the speedy trial of the offences referred to in Sections 135 to 140 and Section 150 of the 2003 Act. He submits that the Special Court does not have the

jurisdiction to entertain and decide the civil suits in the absence of the aforesaid provisions.

4. At this stage, it would be appropriate to notice the statutory provisions. Section 153, 154, 155 and 156 of the Electricity Act, 2003, are extracted as under:-

> ***Section 153. (Constitution of Special Courts): ---*** *(1) The State Government may, for the purposes of* ***providing speedy trial of offences referred to in 1[sections 135 to 140 and section 150], by notification*** *in the Official Gazette, constitute as many Special Courts as may be necessary for such area or areas, as may be specified in the notification.*
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> *(2) A Special Court shall consist of a single Judge who shall be appointed by the State Government with the concurrence of the High Court.*
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> *(3) A person shall not be qualified for appointment as a Judge of a Special Court unless he was, immediately before such appointment, an Additional District and Sessions Judge.*
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> *(4) Where the office of the Judge of a Special Court is vacant, or such Judge is absent from the ordinary place of sitting of such Special Court, or he is incapacitated by illness or otherwise for the performance of his duties, any urgent business in the Special Court shall be disposed of –*
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> *(a) by a Judge, if any, exercising jurisdiction in the Special Court;*
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> *(b) where there is no such other Judge available, in accordance with the direction of District and Sessions Judge having jurisdiction over the ordinary place of sitting of Special Court, as notified under sub- section (1).*
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> ***Section 154. (Procedure and power of Special Court): ---****(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under [2sections 135 to 140 and section 150] shall be triable only by the Special Court within whose jurisdiction such offence has been committed.*
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> *(2) Where it appears to any court in the course of any inquiry or trial that an offence punishable under sections 135 to 139 in respect of any offence that the case is one which is triable by a Special Court constituted under this Act for the area in which such case has arisen, it shall*

transfer such case to such Special Court, and thereupon such case shall be tried and disposed of by such Special Court in accordance with the provisions of this Act :

Provided that it shall be lawful for such Special Court to act on the evidence, if any, recorded by any court in the case of presence of the accused before the transfer of the case to any Special Court :

Provided further that if such Special Court is of opinion that further examination, cross-examination and re-examination of any of the witnesses whose evidence has already been recorded, is required in the interest of justice, it may re-summon any such witness and after such further examination, crossexamination or re-examination, if any, as it may permit, the witness shall be discharged.

(3) The Special Court may, notwithstanding anything contained in subsection (1) of section 260 or section 262 of the Code of Criminal Procedure, 1973, try the offence referred to in sections 135 to 139 in a summary way in accordance with the procedure prescribed in the said Code and the provisions of sections 263 to 265 of the said Code shall, so far as may be, apply to such trial :

Provided that where in the course of a summary trial under this subsection, it appears to the Special Court that the nature of the case is such that it is undesirable to try such case in summary way, the Special Court shall recall any witness who may have been examined and proceed to re-hear the case in the manner provided by the provisions of the said Code for the trial of such offence:

Provided further that in the case of any conviction in a summary trial under this section, it shall be lawful for a Special Court to pass a sentence of imprisonment for a term not exceeding five years.

(4) A Special Court may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to, any offence tender pardon to such person on condition of his making a full and true disclosure of the circumstances within his knowledge relating to the offence and to every other person concerned whether as principal or abettor in the commission thereof, and any pardon so tendered shall, for the purposes of section 308 of the Code of Criminal Procedure, 1973, be deemed to have been tendered under section 307 thereof.

(5) The Special Court shall determine the civil liability against a consumer or a person in terms of money for theft of energy which shall not be less than an

amount equivalent to two times of the tariff rate applicable for a period of twelve months preceding the date of

detection of theft of energy or the exact period of theft if determined whichever is less and the amount of civil liability so determined shall be recovered as if it were a decree of civil court.

(6) In case the civil liability so determined finally by the Special Court is less than the amount deposited by the consumer or the person, the excess amount so deposited by the consumer or the person, to the Board or licensee or the concerned person, as the case may be, shall be refunded by the Board or licensee or the concerned person, as the case may be, within a fortnight from the date of communication of the order of the Special Court together with interest at the prevailing Reserve Bank of India prime lending rate for the period from the date of such deposit till the date of payment.

Explanation. - For the purposes of this section, "civil liability" means loss or damage incurred by the Board or licensee or the concerned person, as the case may be, due to the commission of an offence referred to in sections 135 to 139.

Section 155. (Special Court to have powers of Court of Session):

Save as otherwise provided in this Act, the Code of Criminal Procedure, 1973, insofar as they are not inconsistent with the provisions of this Act, shall apply to the proceedings before the Special Court and for the purpose of the provisions of the said enactments, the Special Court shall be deemed to be a Court of Session and shall have all powers of a Court of Session and the person conducting a prosecution before the Special Court shall be deemed to be a Public Prosecutor.

Section 156. (Appeal and revision):

The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973, as if the Special Court within the local limits of the jurisdiction of the High Court is a District Court, or as the case may be , the Court of Session , trying cases within the local limits of jurisdiction of the High Court.

5. On a careful reading of Section 153 of the 2003 Act, it is evident that the provision for establishing the Special Courts has been made for the purpose of providing a speedy trial of the offences referred to in

Section 135 to 140 and Section 150 of the 2003 Act. Section 135 to 140 and Section 150 falls in Part XIV of the 2003 Act. Section 135 of the 2003 Act provides for the constituents of the theft of energy, whereas, Section 136 of the 2003 Act provides for the theft of electric lines and material.

6. At this stage, it would be appropriate to discuss Section 126, 127 and Section 135 of the 2003 Act, which are extracted as under:-

> ***"Section 126: (Assessment): ---***
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> *(1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgement the electricity charges payable by such person or by any other person benefited by such use.*
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> *(2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.*
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> *(3) The person, on whom an order has been served under sub- section (2) shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment of the electricity charges payable by such person.]*
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> *(4) Any person served with the order of provisional assessment, may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him:*
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> *(5) If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use of electricity has taken place and if, however, the period during which such unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.*
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> *(6) The assessment under this section shall be made at a rate equal to 1[twice] the tariff rates applicable for the*

relevant category of services specified in sub-section (5).

Explanation.- For the purposes of this section,-

(a) "assessing officer" means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government;

(b) "unauthorised use of electricity" means the usage of electricity –

(i) by any artificial means; or

(ii) by a means not authorised by the concerned person or authority or licensee; or

(iii) through a tampered meter; or

(iv) for the purpose other than for which the usage of electricity was authorised; or

(v) for the premises or areas other than those for which the supply of electricity was authorized.

Section 127. (Appeal to Appellate Authority): ---

(1) Any person aggrieved by the final order made under section 126 may, within thirty days of the said order, prefer an appeal in such form, verified in such manner and be accompanied by such fee as may be specified by the State Commission, to an appellate authority as may be prescribed.

(2) No appeal against an order of assessment under sub-section (1) shall be entertained unless an amount equal to half of the assessed amount] is deposited in cash or by way of bank draft with the licensee and documentary evidence of such deposit has been enclosed along with the appeal.

(3) The appellate authority referred to in sub-section (1) shall dispose of the appeal after hearing the parties and pass appropriate order and send copy of the order to the assessing officer and the appellant.

(4) The order of the appellate authority referred to in sub-section (1) passed under sub-section (3) shall be final.

(5) No appeal shall lie to the appellate authority referred to in sub-section (1) against the final order made with the consent of the parties.

(6) When a person defaults in making payment of assessed amount, he, in addition to the assessed amount shall be liable to pay, on the expiry of thirty days from the date of order of assessment, an amount of interest at the rate of sixteen per cent, per annum compounded every six months.

Section 135. (Theft of Electricity): --- (1) Whoever, dishonestly, --

(a) taps, makes or causes to be made any connection with overhead, underground or under water lines or cables, or service wires, or service facilities of a licensee or supplier as the case may be; or

(b) tampers a meter, installs or uses a tampered meter, current reversing transformer, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted; or

(c) damages or destroys an electric meter, apparatus, equipment, or wire or causes or allows any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electricity,

(d) uses electricity through a tampered meter; or

(e) uses electricity for the purpose other than for which the usage of electricity was authorised,

so as to abstract or consume or use electricity shall be punishable with imprisonment for a term which may extend to three years or with fine or with both: Provided that in a case where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use -

(i) does not exceed 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction the fine imposed shall not be less than six times the financial gain on account of such theft of electricity;

(ii) exceeds 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction, the sentence shall be imprisonment for a term not less than six months, but which may extend to five years and with fine not less than six times the financial gain on account of such theft of electricity:

Provided further that in the event of second and subsequent conviction of a person where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use exceeds 10 kilowatt, such person shall also be debarred from getting any supply of electricity for a period which shall not be less than three months but may extend to two years and shall also be debarred from getting supply of electricity for that period from any other source or generating *station:*

Provided also that if it is proved that any artificial means or means not authorized by the Board or licensee or supplier, as the case may be, exist for the abstraction, consumption or use of electricity by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of electricity has been dishonestly caused by such consumer.

(1A) Without prejudice to the provisions of this Act, the licensee or supplier, as the case may be, may, upon detection of such theft of electricity, immediately disconnect the supply of electricity:

Provided that only such officer of the licensee or supplier, as authorized for the purpose by the Appropriate Commission or any other officer of the licensee or supplier, as the case may be, of the rank higher than the rank so authorised shall disconnect the supply line of electricity:

Provided further that such officer of the licensee or supplier, as the case may be, shall lodge a complaint in writing relating to the commission of such offence in police station having jurisdiction within twenty four hours from the time of such disconnection:

Provided also that the licensee or supplier, as the case may be, on deposit or payment of the assessed amount or electricity charges in accordance with the provisions of this Act, shall, without prejudice to the obligation to lodge the complaint as referred to in the second proviso to this clause, restore the supply line of electricity within forty-eight hours of such deposit or payment.

(2) Any officer of the licensee or supplier as the case may be, authorized in this behalf by the State Government may --

(a) enter, inspect, break open and search any place or premises in which he has reason to believe that electricity has been or is being, used unauthorisedly;

(b) search, seize and remove all such devices, instruments, wires and any other facilitator or article which has been, or is being, used for unauthorized use of electricity;

(c) examine or seize any books of account or documents which in his opinion shall be useful for or relevant to, any proceedings in respect of the offence under sub-section (1) and allow the person from whose custody such books of account or documents are seized to make copies thereof or take extracts therefrom in his presence.

(3) The occupant of the place of search or any person on his behalf shall remain present during the search and a list of all things seized in the course of such search shall be prepared and delivered to such occupant or person who shall sign the list:

Provided that no inspection, search and seizure of any domestic places or domestic premises shall be carried out between sunset and sunrise except in the presence of an adult male member occupying such premises.

(4) The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure shall apply, as far as may be, to searches and seizure under this Act."

7. On a careful perusal of Section 126 as extracted above, it is evident that under Chapter XII, it has been provided that if on the inspection of any place or premises or after the inspection of the equipments, gadgets, machines, devices found connected, used or after the inspection of the records maintained by any person, the officer comes to a conclusion that such person is indulging in the unauthorized use of electricity, the officer shall provisionally assess the amount to the best of his judgment. The charges are payable by such person. The unauthorized use of electricity has been further explained in Explanation (b), which includes unauthorized use by any artificial means, or by various other methods. Against the order passed under Section 126 of the 2003 Act assessing the amount, appeal is maintainable under Section 127 of the 2003 Act, before the Appellate Authority.

8. Further, on a careful reading of Section 135 reproduced hereinbefore, it is evident that whosoever dishonestly commits the offence of theft of electricity, he is liable to be punished with imprisonment for a term which may extend to three years or with fine or with both. Thereafter, a proviso to Section 135 of the 2003 Act provides for the penalty or imprisonment, if the load abstracted, consumed, or used or attempted

abstraction, consumption or use exceeds the specified extent. Further, Section 150 provides that whosoever abets an offence punishable under this Act shall also be liable to be punishable for having committed an offence.

9. Although, no doubt, Section 135 of the 2003 Act do provide for recovery of fine in the nature of a penalty, however, it does not provide that such amount shall be recoverable on the basis of the electricity charges payable by such person. In other words, Section 135 of the 2003 Act provide for recovery of the amount only as a fine as provided under Code of Criminal Procedure, 1973, (hereinafter referred to as "the Cr.P.C"). Sub-Section 4 of Section 135 also provides that the provisions of the Cr.P.C. relating to search and seizure shall apply as far as possible to the search and seizure under this Act. Furthermore, the remedy to initiate proceedings under Chapter XIV lies with the licensee or the supplier, as the case may be. Under Chapter XIV, the consumer of electricity does not have the power to initiate the proceedings. Similarly, under Chapter XV, the power to initiate the proceedings is with the licensee or supplier of the electricity. On more than one occasion, reference has been made to the provisions of the Cr.P.C. It is only in Sub-Section 5 of Section 154 of the 2003 Act, the Parliament has provided that while deciding the criminal case for offences under Section 135 to 140 and Section 150 of the 2003 Act, the civil liability against a consumer or a person in terms of money, shall also be assessed. Thus, intention is to create a hybrid system so as to enable the Court to determine the civil liability while trying the criminal offences under the 2003 Act. However, predominently, the stress is laid down on the speedy trial of the offences under the 2003 Act and not on the civil liability. The determination of the civil liability is subservient to the pendency of the

criminal offence.

10. Now, coming back to the discussion on Section 153 of the 2003 Act, it is crystal clear that the Special Courts have been constituted only for the purpose of a speedy trial of offences. Sub-Section 5 of Section 154 of the 2003 Act, confers jurisdiction on the Special Court to determine the civil liability against a consumer or a person in terms of money for theft of energy, only when criminal trial is pending. Sub-Section 5 of Section 154 of the 2003 Act further provides that such orders passed by the Special Court shall be executed against the judgment debtor, as if it were a decree of the Civil Court. Sub-Section 6 of Section 154 of the 2003 Act provides that if the civil liability so determined by the Court is less than the amount deposited by the consumer of a person's domestic electricity connection, the excess amount shall be liable to be refunded along with interest at the prevailing Reserve Bank of India Prime Landing Rate.

11. Section 155 of the 2003 Act, again, provides that the Special Court shall be deemed to be a Court of Session and shall have all the powers of a Court of Session. It nowhere provides that it shall have powers of Principal Civil Court of the District.

12. While interpreting jurisdiction of a Special Court or a Tribunal, it has to be kept in mind that such a provision is to be strictly construed. Fundamentally, the jurisdiction of the Civil Court under Section 9 of the Code of Civil Procedure, 1908, is plenary. However, the jurisdiction of the Special Court cannot be said to be plenary. The Special Court in this regard draws its power from the 2003 Act. On a conjoint reading of Sections 153, Section 154 and 155, it becomes evident that the power to determine the civil liability is dependant on the pendency of the criminal trial. It is also

evident that the enactment does not provide that the Special Court will entertain, try and decide the civil liability, independent of the trial of criminal offence. The attention of the Court has not been drawn to any provision which enables the Special Court to entertain and decide civil liability irrespective of fact whether trial of an offence is pending or not? The jurisdiction of the Special Court to entertain, try and decide civil liability is dependant on the question of pendency of the trial of criminal case.

13. This matter has been examined by the Supreme Court in ***North India Power Limited (supra)***. After the grant of leave, the Supreme Court in a short but crisp order held as under :-

> *"Part XV of the Act deals with the Constitution of Special Courts. Section 153 states that this is for the purpose of providing for speedy trial of offences referred to in Section 135 to 140 and Section 150 of the Act. The procedure and power of the Special Court is laid down under Section 154 of the Act, including the power to levy a penalty which is referred as "civil liability" under Section 154(5) and 154(6) of the Act. Section 155 states that the Special Court is to have the powers of a Court of Sessions, and Section 157 of the Act vests the Special Court with a power of Review. Under Section 156 of the Act, appeals and revisions that are available against the Court of Sessions and that are provided under the Code of Criminal Procedure, 1973 can also be availed of.*
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> *It is clear from a perusal of the aforesaid sections that the Special Electricity Court acts as a Court of Sessions and has been set up to try offences that are committed under the Act. By no stretch of imagination can it be stated that a civil suit would be within the jurisdiction of such Court. We are, therefore, of the view that the impugned judgment deserves to be set aside."*

14. The learned counsel representing the parties have drawn the attention of the Court to the various judgments passed by the coordinate

Benches, which are as under:-

1. ***Kapoor Singh Vs. Punjab State Power Corporation Limited and others, Civil Revision No.1865 of 2014, decided on 12.03.2014.***

2. ***Darshan Singh Vs. Punjab State Power Corporation Limited and others, Civil Writ Petition No.24925 of 2013, decided on 11.01.2017.***

3. ***Dakshin Haryana Bijli Vitran Nigam Limited and another Vs. Jaswant Singh @ Jaibir, Regular Second Appeal No.3933 of 2017, decided on 30.08.2017.***

15. This Bench has carefully read the various judgments relied upon by the learned counsel representing the parties.

16. In ***Kapoor Singh (supra)***, no doubt, the Court holds that a civil suit challenging the assessment/demand invoice can be assailed before the Special Court. However, in view of subsequent judgment passed by the Supreme Court in ***North India Power Limited (supra)***, the judgment in ***Kapoor Singh (supra)*** is no more a good law. In ***Darshan Singh (supra)***, the Court was examining the correctness of order passed by the Additional District Collector, Patiala, passed while dismissing the appeal filed against the final assessment order with regard to the alleged theft. The Court after discussing the provisions of Section 126 and Section 154 of the 2003 Act, ultimately held that the appeal before Additional District Collector is maintainable. The High Court was deciding a writ petition assailing the correctness of the order passed by the Additional District Collector, Patiala. It was in that context, the matter was examined. Hence, the aforesaid judgment is not applicable.

17. The next judgment relied upon by the learned counsel representing the parties is ***Jaswant @ Jaibir (supra)***. In that case, the Court

examined the question as to whether the jurisdiction of the civil Court is barred under Section 145 of the 2003 Act, in a case where the the Electricity Board/Department/Nigam demands charges for the alleged theft covered under Section 135 of the 2003 Act and further, whether the consumer can be relegated to the alternative remedy of the appeal under Section 127 of the 2003 Act in such a case. In the present case, the question is entirely different. It is evident that the question involved in ***Jaswant Singh's case (supra)*** was different. In that case, the civil suit was filed before the Civil Judge, whereas, in the present case the question is with respect to the scope of jurisdiction of a Special Court, which was not the question examined by the Court while deciding ***Jaswant Singh's case (supra)***.

18. Keeping in view the aforesaid discussion, it is evident that the Special Court constituted under Section 153 of the 2003 Act, do not have the jurisdiction to entertain, try and decide civil liability in the absence of pendency of the trial of offences referred to in Sections 135 to 140 and Section 150 of the 2003 Act.

19. Consequently, both the appeals are allowed. The judgments passed by the Special Courts are held to be without jurisdiction and therefore, set aside. The respondents-plaintiffs shall be free to avail the alternative remedy.

All the pending miscellaneous applications, if any, are also disposed of.

21st December, 2021 **(ANIL KSHETARPAL)**
Ay **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No