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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2022

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.311 of 2022

K.Hariprasad

...Petitioner

vs.

1. Tamil Nadu Generation and
Distribution Company Limited
(TANGEDCO)

Represented by its Chairman
cum Managing Director
No.144, Anna Salai,
Chennai - 600 002.

2. Junior Electrical Engineer
Gobi Electricity Distribution Circle,
West - Bhavani
TNEB
Urachikottai,
Bhavani - 638 301,
Erode District.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the letter dated 27.10.2021 bearing Letter No.E.Mi.Po/E.Pe/Merku/ Bhavani/ Ko:Vi/En:327/2001 ("Impugned Letter") issued by the 2nd respondent herein and quash the same .

For petitioner : Mr.Adarsh Subramanian

For respondents: Mr.Abul Kalam,
Standing counsel

ORDER

The issue involved in this writ petition is whether a person claiming to be a bonafide purchaser can be held liable for the penalty amount liable to be paid by his vendor for the alleged theft of electricity committed by his vendor when he was in possession and occupation of the property as the absolute owner.



2. The petitioner has purchased a vacant land from a person by name N.Sidheswaran under Sale deed dated 03.05.2017 registered as Document No.1552 of 2017, SRO, Bhavani. The total extent of the land purchased by the petitioner is 2.62 acres comprised in R.S. No.509 of 1 in Bhavani Village, Bhavani Taluk, Erode District. The petitioner claims that he is the Director of a Company by name M/s.Poovarasi Textile Mills Private Limited, which is running a small scale industry and is registered under the Micro, Small and Medium Enterprises Development Act (MSME Act). The petitioner has applied for a new electricity service connection after construction of the building in the vacant land with the first respondent and sought for three phase connection with Industrial-Service -Tariff-III-B supply with a load of 110.5 KW.

3. Under the impugned order dated 27.10.2021 issued by the second respondent, the petitioner has been directed to pay a sum of Rs.2,16,01,378/- for the dues payable by his vendor Sidheswaran as according to the respondents, his vendor Sidheswaran had committed theft of electricity while he was in possession of the subject property prior to the sale made by him in favour of the petitioner. The petitioner contends that he is not liable to pay the penalty amount payable by his vendor on account of the theft of electricity committed by him. The petitioner also claims that the imposition of penalty for the theft of electricity has been challenged by his vendor by filing writ petitions. The petitioner claims that he is a bonafide purchaser having paid valuable consideration to the vendor and he is not aware of the previous proceedings initiated by the respondents against Sidheswaran for the alleged theft of electricity.

4. A counter affidavit has been filed by the respondents reiterating the contents of the impugned order imposing penalty. They would submit that the vendor of the petitioner had committed theft of electricity and he has admitted that he is liable to pay Rs.2,16,01,378/- which is the amount mentioned in the impugned order and he has also paid a part amount of Rs.21,00,000/- towards compounding of the offence. According to the respondents, the petitioner was aware of the earlier proceedings and he is not a bonafide purchaser. They have also pleaded that the sale made by Sidheswaran in favour of the petitioner will amount to a fraudulent sale. According to them, no proper intimation was given by Sidheswaran to the respondents about the conveyance made to the petitioner and therefore, he has violated Regulations 17(4) and 17(9) (a) of the Tamil Nadu Electricity Supply Code.

5. Heard Mr.Adarsh Subramanian, learned counsel for the petitioner and Mr.Abul Kalam, learned Standing counsel for the respondents.



6. The learned counsel for the petitioner would rely upon a decision of a Division Bench of this Court in the case of Assistant Engineer / O & M vs. Sabasthi Ammal and another rendered in W.A. No.719 of 2014 on 27.01.2015 and in particular, he refers to paragraph No.18 of the said order and would submit that it has been made clear in the said decision that the petitioner in the writ petition who is not aware of the earlier proceedings initiated against his vendor for theft of electricity cannot be held liable to pay the penalty amount in respect of the dues payable by his vendor. He would also rely upon another decision of a learned Single Judge of this Court dated 08.03.2017 passed in the case of R.S.Thiyagarajan vs. Assistant Electrical Engineer and another in WP (MD) No.2155 of 2017 following the aforementioned Division Bench Judgment. In particular, he would refer to paragraph No.5 of the said order and would submit that the Electricity Department is not entitled to collect charges which are due by the Ex-owner or the tenants of the Ex-owner, which are payable by them on account of theft of energy committed by them.

7. Relying upon the aforesaid decisions, the learned counsel for the petitioner would submit that the petitioner is not liable to pay the impugned demand. He would also submit that at the time of the purchase of the property by the petitioner, it was a vacant land and therefore, the petitioner is a bonafide purchaser, who does not know about the earlier proceedings initiated against his vendor for the alleged theft of electricity. The petitioner also drew the attention of this Court to the sale deed, by which, the petitioner became the owner to show that the property purchased by the petitioner was a vacant land.

8. The learned Standing counsel for the respondents would reiterate the contents of the counter affidavit filed in this writ petition and would submit that even though the penalty proceedings for theft of electricity was initiated against the vendor of the petitioner, the penalty amount will have to be paid by the petitioner as he is not a bonafide purchaser as no intimation of the sale in favour of the petitioner was given to the respondents before selling the property by Sidheswaran in favour of the petitioner.

9. The learned Standing counsel for the respondents also drew the attention of this Court Regulation 17 (4) and 17(9) (a) of the Tamil Nadu Electricity Supply Code in support of his contention that prior notice will have to be given to the respondents before sale of the property. According to him, the same has not been given and therefore, the petitioner is liable to pay the penalty amount.



Discussion :-

10. The very same issue has been considered by the Division Bench of this Court in Assistant Engineer / O & M vs. Sabasthi Ammal and another referred to supra though in that decision, the penalty proceedings were initiated for theft of energy against the previous tenant. However, the same principle can also be applied to the facts of this case, even though in the instant case proceedings were initiated against the vendor of the petitioner who is the owner. In the said decision, the Hon'ble Division Bench has held that insofar as the penalty amount is concerned with regard to the theft of energy, the person who has committed the theft is alone liable to pay the penalty amount and not the successors-in-title. The relevant paragraph of the said Hon'ble Division Bench judgment is extracted hereunder :

18. Therefore, in the present case, the fact of the matter is that the First Respondent/writ Petitioner by means of an order dated 31.12.2005 was allotted a shed bearing No.915, 28 th street, B.V.Colony, Vyasarpadi, Chennai-39 and she is engaged in a small trade of packing salt in small polythene bags and sell the same in retail. Moreover, electricity supply is necessary for her small business and as such, the impugned order dated 17.03.2011 passed by the Appellant/First Respondent recovering the First Respondent/writ Petitioner to pay the sum of Rs.15,53,975/- together with interest to the Tamil Nadu Electricity Board and only when she is willing to pay the aforesaid amount, the new service connection in her name would be considered is not legally a tenable one in the eye of law because of the simple reason for theft of energy or for the benefit enjoyed by a person in regard to the theft of electricity only that particular person can be considered to be an accused person and against whom the Appellant/First Respondent/TNEB can proceed in the manner known to law and in accordance with law. But the First Respondent/writ Petitioner by no stretch of imagination be called upon to pay a sum of Rs.15,53,975/- with interest to the Tamil Nadu Electricity Board and putting a precondition in regard to the above said payment by the Appellant/Tamil Nadu Electricity Board is not correct and legally valid one in the eye of law based on the reason that the First Respondent/writ Petitioner had not committed theft of electricity or energy or even benefited by the theft of electricity which was detected on 19.04.2001 and in fact, the previous tenant Sengalammal was alone



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responsible for the same in regard to her electricity connections A/c.67-17-584. Also that, the First Respondent/writ Petitioner who is not at all connected with the previous tenant of the Second respondent/Tamil Nadu Slum Clearance Board in the considered opinion of this Court cannot be imposed with a liability of erstwhile tenant in the absence of any agreement between her and the Electricity supplier, more so when the theft of energy was purportedly detected on 19.04.2001 in A/c.67-17-584, wherein, the theft of energy detected was used by the erstwhile tenant namely, Sengalammal.

11. The aforesaid judgment of the Hon'ble Division Bench was also followed by a learned Single Judge of this Court in the case of R.S.Thiyagarajan vs. Assistant Electrical Engineer and another, dated 08.03.2017 in WP (MD) No.2155 of 2017 and in that decision the facts are identical to the facts of this case. In the decision rendered by the learned Single Judge referred to supra, penalty proceedings were initiated against the ex-owner of the property from whom the petitioner therein had purchased the property and the learned Single Judge held that the Electricity Department is not entitled to collect charges which are due by the Ex-owner or the tenants of the Ex-owner, which are payable by them on account of theft of energy committed by them.

12. The relevant paragraph of the decision rendered by the learned Single Judge is extracted hereunder :-

5. From the reading of the above judgement of the Hon'ble Division Bench, it is clear that the Electricity Department is not entitled to collect charges which are due by the Ex-owner or the tenants of the Ex-owner, which are payable by them on account of theft of energy committed by them. However the Hon'ble Division Bench relying upon Clause 17(9)(a) of the Tamilnadu Electricity Supply Code, 2004, has held that the Electricity Department is justified in collecting the lawful electricity consumption charges from the previous occupier/tenant or other charges which are ancillary/incidental towards the service connection.

13. In the instant case, even though the respondents have stated that the petitioner is not a bonafide purchaser, there is no iota of evidence produced to show that he is not a bonafide purchaser. There must be some evidence to show that the petitioner is not a bonafide purchaser. Even though the respondents have pleaded that the sale effected by Sidheswaran



in favour of the petitioner in the year 2017 will amount to fraudulent transfer, they have not produced any evidence to substantiate their contention.

14. In view of the law laid down by the Hon'ble Division Bench of this Court, which has been followed by another learned Single Judge of this Court referred to supra, the impugned demand made against the petitioner calling upon the petitioner to pay penalty amount of Rs.2,16,01,378/- for the alleged theft of electricity committed by his vendor is arbitrary and illegal. Therefore, the impugned order has to be necessarily quashed and the writ petition will have to be allowed. Accordingly, the impugned order dated 27.10.2021 passed by the second respondent is hereby quashed and the writ petition is allowed. No costs.

15. In view of allowing of the writ petition, the petitioner is permitted to submit a fresh application to the respondents seeking for electricity service connection and on receipt of the said application, the respondents shall consider the same on merits and in accordance with law within a period of twelve weeks thereafter.

Sd/-
Assistant Registrar(CS-II)

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Sub Assistant Registrar

vsi2

To

1. The Chairman cum Managing Director
Tamil Nadu Generation and
Distribution Company Limited
(TANGEDCO)
No.144, Anna Salai,
Chennai - 600 002.

2. The Junior Electrical Engineer
Gobi Electricity Distribution Circle,
West - Bhavani
TNEB, Urachikottai,
Bhavani - 638 301, Erode District.

+1cc to Mr.Adarsh Subramanian, Advocate SR.No.38655

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CA(CO)
GMY(28/06/2022)