



W.P.No.14545 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :28.10.2022

CORAM:

THE HON'BLE **MR.JUSTICE N.SATHISH KUMAR**

W.P.No.14545 of 2015

V.Desappan

... Petitioner

Vs.

1.The Executive Engineer (O & M)

Office of the Executive Engineer

Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO)

Maraimalai Nagar 603 209, Kancheepuram District

2.The Assistant Engineer (O & M)

Office of the Assistant Engineer

Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO)

Kovalam 603 112, Kancheepuram District

3.G.Velappan

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India praying for issuance of Writ of Certiorari, to call for the records and quash the demand notice dated 05.02.2015 bearing Letter No.Che.po/ E.pa/ Ma.ma.na/Vu.po/ko./ Enforcement Division / No.1007 / 14-15 of the first respondent issued to the petitioner confirming the demand notice



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dated 10.11.2014 bearing letter No.Vu.mi.po./E.pa./Kovalam/Ko. Kattu/
A.No.163 / 2014 of the second respondent issued to the petitioner.

For Petitioner : M/s.CPG. Yoganand and Associates

For Respondents : Mr.L.Jaivenkatesh
Standing Counsel for R1 & R2

R3 - refused

ORDER

Writ Petition has been filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorari, to call for the records and quash the demand notice dated 05.02.2015 bearing Letter No.Che.po/ E.pa/ Ma.ma.na/Vu.po/ko./ Enforcement Division / No.1007 / 14-15 of the first respondent issued to the petitioner confirming the demand notice dated 10.11.2014 bearing letter No.Vu.mi.po./E.pa./Kovalam/Ko. Kattu/ A.No.163 / 2014 of the second respondent issued to the petitioner.

2.The brief facts leading to the case as follows;

The petitioner has purchased the property situated in Suvey No.117/4 of Kanathur Reddikuppam Village, Rajaji Street, Tirupporur



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Taluk. Subsequent to his purchase, he put up a construction and obtained single phase electricity service connection bearing No.09-579-007-1406 in his name in July 2008 for non residential purpose and let out to the tenants since 2008 and the charges have been paid for the consumption all these years till date. While so, demand notice dated 10.11.2014 was received from the 2nd respondent, calling upon the petitioner to pay a sum of Rs.3,21,450/- which was allegedly the penalty arrived by the 2nd respondent for the criminal offence of electricity theft committed by the erstwhile owner of the property, who is the 3rd respondent herein. The alleged theft was noticed on 10.10.2003 in respect of another service connection bearing No.579-007-840. Despite the reply by the petitioner, the petitioner was served with the impugned demand notice for recovery of sum of Rs.3,21,450/- and there was also an imminent threat of disconnection of electricity service connection. Hence the petition.

3.Counter affidavit filed by the 2nd respondent states that the service connection in SC.No.840/674 stands in the name of Mr.Velappan



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was inspected on 10.10.2003 by the AEE/ Anti Power Theft Squad / Chengalpattu and the theft of energy was detected on 10.10.2003 itself. The assessment notice for a sum of Rs.3,21,450/- was also issued to the 3rd respondent, besides F.I.R.No.756 of 2003. Thereafter, an opportunity was provided to the 3rd respondent to appear before the 2nd respondent for enquiry, however, he did not appear. Thereafter, the property was sold to the petitioner in the year 2008. Hence, it is the contention of the 2nd respondent that as per the Regulation 17(9) of Tamil Nadu Electricity Supply Code, the assessment amount of Rs.3,21,450/- have been loaded in the existing SC.No.579-007-1406 / Tariff V stands in the name of the writ petitioner. Hence, sought for dismissal of the above petition.

4.Learned counsel for the petitioner submitted that the petitioner has purchased the property only in the year 2008, whereas, the erstwhile owner has allegedly committed the theft of energy in the year 2003 and the assessment was made in the year 2003 itself, but the respondents have not taken any steps for recovery from the erstwhile owner and the property was sold to the petitioner in the year 2008. At any rate, the



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penalty assessment amount by the respondents cannot be loaded to the consumption charges of the subsequent purchaser. According to the petitioner, such penalty amount cannot be construed as dues to load with the consumption charges of the subsequent purchaser. Hence, the demand notice raised by the respondents is unreasonable and unsustainable in the eye of law. Further, it is the contention of the learned counsel that as per TN Electricity Board (Recovery of Dues) Act, 1978, dues includes consumption of electrical energy supplied and not for the penalty amount levied. Hence, seeks to assail the demand notice.

5.Learned standing counsel appearing for the Electricity Board submitted that, as the erstwhile owner has committed a theft, assessment has been made for a sum of Rs.3,21,450/- as per the Regulation 17(9) of Tamil Nadu Electricity Supply Code. In case of re-connection / new connections in respect of the premises where the payment of due is payable earlier, the subsequent purchaser has to pay that amount due and payable by the erstwhile owner. Therefore, the amount assessed has been



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loaded to the petitioner's service connection. Hence, prays for dismissal of the writ petition.

6.Heard the learned counsel on either side. Perused the entire materials on record.

7.It is not disputed that the theft was detected on 10.10.2003, particularly in respect of different service connection in SC.No.840/674, by the 3rd respondent / the erstwhile owner of the premises. It appears that assessment for a sum of Rs.3,21,450/- has been issued in the name of the 3rd respondent, however, the department has not taken any steps to recover that amount from the person on whom it is levied, The petitioner has purchased the property in the year 2008. Thereafter, the penalty levied by the department has been loaded as dues by the petitioner. The petitioner's connection itself is a different connection obtained by the petitioner in No.09-579-007-1406.

8.It is the contention of the respondent that, as per the Regulation 17(9) of Tamil Nadu Electricity Supply Code, any dues payable by the



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erstwhile owner has to be paid by the subsequent purchaser, therefore, the amount has been demanded from the subsequent purchaser. It is relevant to note that the Regulation 17(9) of Tamil Nadu Electricity Supply Code, relates to the disconnection of the earlier connection and new connection from the same premises. It is not the case of re-connection or fresh connection for the first time. The purchaser has already obtained a separate service connection in the year 2008 after his purchase, now a demand notice has been issued for the penalty levied against the 3rd respondent for the alleged theft of energy in the different service connection in the same premises.

9. Though, it is stated by the respondents that the dues are also payable by the subsequent purchaser as per Tamil Nadu Electricity Supply Code and as per TN Electricity Board (Recovery of Dues) Act, 1978, the “dues” has been defined as follows;

(2). “dues” means any sum payable to the Board on account of;

(i) consumption of electrical energy supplied ; or

(ii) any remuneration, rent or other charges for hire,



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inspection, test, installation, connection repairs, maintenance or removal of any electric meter, electric machinery, control gear, fittings, wires or apparatus for lighting, heating, cooling or motive power or for any other purpose for which electricity can or may be used, or any industrial or agricultural machinery operated by electricity ; or

(iii) price of any such goods as aforesaid taken on loan but not returned ;

10.The penalty amount is never defined as a due in the above said Act. Further, Section 6 of the said Act provides that the proceedings for recovery of the penalty and in the event of penalty amount not paid by the person against whom such proceedings are initiated, the same shall be recovered as an arrears of land revenue.

11.Combined reading of Section 2 and 6 of TN Electricity Board (Recovery of Dues) Act, 1978, make it clear that right to recovery of due is only a right in personam and not a right in rem and the recovery is only against the person who committed the theft as per Section 6 of TN Electricity Board (Recovery of Dues) Act, 1978.



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12.It is also relevant to note the decision of this Court in W.P.(MD).No.2155 of 2017 in R.S.Thiyagarajan V. Assistant Electrical Engineer and another dated 08.03.2017, wherein, this Court has 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.

13.Similarly, a Division Bench of this Court in Assistant Engineer / O & M V. Sabasthi Ammal and another in W.A.No.719 of 2014 vide order dated 27.01.2015, has held that as far as the penalty amount is concerned with regard to the theft of energy, the person who has committed the theft alone is made responsible and not the successor in title.

14.Such view of the matter, as the mode of recovery of penalty specifically provided in the Act of TN Electricity Board (Recovery of Dues) Act, 1978 and Section 6, it is only a right in personam and the



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penalty proceedings cannot be loaded with the service connection of the subsequent purchaser. Hence, this Court is inclined to allow this writ petition.

15.This Writ Petition stands allowed accordingly. The demand notice dated 05.02.2015 bearing Letter No.Che.po/ E.pa/ Ma.ma.na/Vu.po/ko./ Enforcement Division / No.1007 / 14-15 of the first respondent issued to the petitioner confirming the demand notice dated 10.11.2014 bearing letter No.Vu.mi.po./E.pa./Kovalam/Ko. Kattu/ A.No.163 / 2014 of the second respondent stands quashed. No costs.

28.10.2022

kas

Index : yes /no

Internet : yes / no

Speaking / Non speaking order

To

1.The Executive Engineer (O & M)
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