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W.P.No.22706 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :28.10.2022

CORAM:

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

W.P.No.22706 of 2013

NATARAJAN (Deceased)
2.N.SARASWATHI
3.N.NAGARATHINAM
4.N.SITHESWARAN

(P2 to P4 substituted as the LR's of the
deceased P1 vide order dt.28.09.2022
made in WMP.21735/2022 in
WP.22706/2013 By NSKJ)

... Petitioner

Vs.

1.TANGEDCO
Rep. by
The Superintending Engineer
Gobi Electricity Distribution Circle
Gopichettipalayam

2.TANGEDCO
Rep. by
The Assistant Executive Engineer
Gobi Electricity Distribution Circle
West Bhavani

... Respondents



W.P.No.22706 of 2013

PRAYER: Writ Petition filed under Article 226 of Constitution of India praying for issuance of Writ of Certiorarified Mandamus, call for the records of the 1st respondent in his proceedings க.எண்.மே.பொ/கோமிபவ/கோ/ உ.செ.பொ.பொ/ இமிபொ2/ கோ.தனி/ எண்.254-4/2013 dated 03.05.2013 and quash the same, consequently direct the respondents to restore the service connection of the petitioner bearing S.C.No.1045, situated at No.8/222-G, Thottipalayam, Uratchikottai Road, Bhavani Taluk, Erode District.

For Petitioner : Mr.S.Arivazhagan

For Respondents : Mr.S.Silambannan, AAG
Assisted by Mr.M.Abdul Kalam, SC
and Mr.Babu Barneez, G.A.

ORDER

Writ Petition has been filed under Article 226 of Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in his proceedings க.எண்.மே.பொ/கோமிபவ/கோ/ உ.செ.பொ.பொ/ இமிபொ2/ கோ.தனி/ எண்.254-4/2013 dated 03.05.2013 and quash the same, consequently direct the respondents to restore the service connection of the petitioner bearing S.C.No.1045, situated at No.8/222-G, Thottipalayam, Uratchikottai Road, Bhavani Taluk, Erode District.



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2.It is the contention of the learned counsel for the petitioners that their family is running a industry and manufacturing powder from coconut shell and also powder from stone in order to run the machineries of the plant, for which they have obtained electric service connection in S.C.No.1045 from the respondent Board in the individual name. On inspection on 25.03.2013, it is alleged that there was a theft of energy in the above service connection and compounding amount of Rs.3,20,000/- also paid by the petitioners and the respondents have levied penalty and passed final assessment order for a sum of Rs.36,06,538/-.

3.It is also the contention of the learned counsel for the petitioners that only the Special Court under Section 153(5) of the Electricity Act, 2003, shall determine the civil liability 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



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if it were a decree of Civil Court. Therefore, it is the contention of the learned counsel for the petitioners that having alleged that there is a theft of energy, only the Special Court can determine the liability against the consumer. Whereas, the petitioners are forced to pay the amount and the appeal is also dismissed. Therefore, sought quashment of the order and restoration of the connections.

4.Per contra, the learned counsel for the respondent Board would submit that the petitioners themselves have admitted the theft of energy in the mahazar and they have also paid the compounding fee and now they cannot contend as if there is no theft of energy. The learned counsel further submitted that now the property has already been transferred to the 3rd parties and when the demand is raised for reconnection, the 3rd party purchaser challenged the same in the Writ Petition No.311 of 2022 and the said writ petition was allowed and ordered to restore the connection. Such view of the matter, the writ petition itself has become infructuous as the petitioners having admitted the theft and having sold the property, cannot seek any relief in this writ petition.



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5.No doubt, under Section 153 of the Electricity Act, 2003, when the prosecution is initiated under sub clause (6) of the Electricity Act, 2003, only the Special Court can determine the civil liability against the consumers. It is the submission of the learned counsel for the petitioners before this Court that they have paid the compounding fees, on a perusal of the records, the petitioners in fact admitted the alleged theft and also signed in the mahazar, based on which the assessment was made and penalty has been adjudicated and not stopping with that, they have also sold the property to the 3rd parties already. When the Court posed the question as to whether the property has been sold to the 3rd party, the same was not disputed by the writ petitioners.

6.Once the petitioners divested the property and impugned notice is issued, the challenge to the impugned notice has become academic and since the reconnection is already been ordered in W.P.No.311 of 2022 dated 22.06.2022 in favour of the subsequent purchaser, the question of reconnection of the domestic service connection to the petitioners does



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not arise at all, as the property has already been transferred and the subsequent purchaser has also filed a petition in W.P.No.311 of 2022 and obtained orders on 22.06.2022. The petitioners having paid the compounding fees. In the event the prosecution has been launched, the Special Court will decide the liability against the petitioners. In Such view of the matter, no further order is required in this writ petition.

7.Subject to the above, the Writ Petition stands disposed of. No costs.

28.10.2022
(2/8)

kas

Index: yes / no
Internet : yes / no
Speaking / Non speaking order

To.

1.The Superintending Engineer
TANGEDCO
Gobi Electricity Distribution Circle
Gopichettipalayam



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2. The Assistant Executive Engineer
TANGEDCO
Gobi Electricity Distribution Circle
West Bhavani

N.SATHISH KUMAR, J.

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