



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2022

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

W.P.No.32116 of 2014

&

M.P.Nos.1,2 of 2014

K.Mohan

... Petitioner

Vs.

1.The Chairman
Tamilnadu Electricity Board
Annasalai, Chennai-600 002

2.The Superintending Engineer
Tamilnadu Electricity Board
Chennai Electricity Distribution Circle/ West, Chennai

3.The Executive Engineer/Operation and Maintenance
Tamilnadu Electricity Board
Chennai Electricity Distribution Circle/ West
Anna Nagar, Chennai-600 040

4.The Assistant Executive Engineer/Operation and Maintenance
Tamilnadu Electricity Board
Arumbakkam CEDC/West
Plot No.P 253,
Arumbakkam, Chennai-600 106

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records of the fourth respondent in Ka. No./Uu.Po/E.Pa/Ko/Niluvai/A/Pa/A/09 dated Nil and the consequential letters dated 18.01.2013 in Ka.No.Uu.Se.Po/Ethil/Arumbakkam/Ko.Abartha Thogai/No.Mugam/2013 dated 18.01.2013 and Ka.No./Uu.se.Poo/Ethil/Arumbakkam/Ko.Abartha Thogai/No.Mugam/2013 dated 13.02.2013, quash the same and consequentially to forbear the respondents from disconnecting the six electricity connections for the premises bearing door No.1, Perumal Koil street, Nerkundram, Chennai-600 107 and restore the service connection bearing No.176.42.01 and 406.005.485 for the premises at No.1, Muthu Kumara Swamy Street, Perambur, Chennai-600 011.



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For Petitioner : Mr.M.L.Ramesh

For Respondents: Mr.L.Jai Venkatesh,
Standing Counsel

O R D E R

Challenging the demand raised by the respondents dated 18.01.2013 and consequential order dated 13.02.2013, the petitioner has approached this Court.

2. The petitioner is a landlord he let out the premises in favour of one M/s. Centura Plastic Industries under a lease agreement on a monthly rent of Rs.2000/-. The tenant was liable to pay electricity connection charges under the terms and conditions of the lease agreement directly to the respondents. While the tenant was under occupation on 07.07.2000 an inspection was conducted by the anti theft detection squad of the respondents with regard to tampering of meter box. On 28.07.2000 the meter was disconnected and removed was reinstalled and electricity supply was restored without notice to the landlord. Again show cause notice dated 10.08.2000 was issued to the tenant and he appeared for enquiry and filed a writ petition before this Court. Thereafter, an assessment order was passed by the respondents against which also the tenant preferred an appeal. He also challenged the order by filing a suit in O.S.No.6604 of 2002 on the file of XVII Assistant City Civil Court, Chennai. In all these proceedings the petitioner who is a landlord was not made a party and no notice was served on him. Ultimately the suit was decreed on 24.04.2012. Immediately after that the tenant vacated the premises. The electricity board issued notice of demand dated 18.01.2013 to the tune Rs.23,06,005/- which is impugned by way of impugned demand and with a condition that if the amount is not paid within 15 days it will collected along with the electricity consumption charges for the next month.

3. According to the learned counsel for the petitioner, from the beginning till the dismissal of the suit the petitioner was never been put on notice and it is the transaction between the tenant as well as the electricity board in respect of fixation of tariff, collection of consumption charges. Therefore, he is not liable to pay any amount the electricity board shall collect it from the person who consumed electricity.

4. In a similar circumstances, the electricity regulatory commission as per Regulation 17(4) of the Supply code, directed the electricity board to recover the consumption charges from the tenant and not from the owner.



5. This Court in W.P.No.20433 of 2013 by its order dated 26.07.2016 has considered, in similar circumstances the very same issue. The questions which fell into the consideration of the Court in that Writ petition is as follows:

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" 10. In view of the submissions made on either side, the following questions fall for consideration in this writ petition_

(1)Whether the petitioner, who was neither the owner nor the occupier nor enjoyer of the premises, on the date of inspection by the respondents, is liable to pay the Compounding Fee and Penalty as demanded by the respondents, under Section 135 of the Act, for the alleged unauthorised usage of electricity power by the third party?

(2)Whether the petitioner is liable to pay the Compounding Fee and Penalty as demanded by the respondents, under Section 135 of the Act, since he has failed to give advance intimation to the Electricity Board with regard to transfer/leasing out of the property to the third party, as required under Regulation 17(4) of the Supply Code?"

6. After elaborately discussing held that the tenant alone is liable to pay the charges. The relevant paragraph of the order relying on the judgment of Gujarat High Court in CDJ 2009 GHC 003, Barot Vittalbhahi Damodardas Vs. Natwarbhahi Umedbhahi Patel reads thus:

" 14.In this regard, a reference could be placed in the judgment relied upon by the learned counsel for the petitioner, delivered by the High Court of Gujarat, reported in CDJ 2009 GHC 003 in the case of Barot Vitthalbhahi Damodardas Vs. Natwarbhahi Umedbhahi Patel, wherein it has been observed as follows:

"3. It appears that it is an admitted position that at the time when the inspection took place the shop in question - premises was in the occupation of the tenant Patel Pankajkumar Bhikhabhai. The said aspect is also recorded in the complaint by the complainant and the petitioner was not at all in actual occupation or using the shop or the electricity supply. When there is any allegation for fastening of criminal liability, it would be qua the person, who has committed offence and it



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cannot be extended to the owner of the property, unless there is any specific accusation that the owner is aware about it and he has played role in alleged offence for use of the electricity by the tenant by doing alleged theft. The principles of fastening criminal liability is different than that of civil liability in case of an ownership of the property or the use of the electricity. The language of Section 135 of the Act even if considered as it is, it refers to 'whoever' and the same would mean 'a person, who is involved in the commission of offence'. In a case where the property is owned by 'a' and is given on rental basis on any other agreement or contract known to law to 'b' and when 'b' is in occupation and using the electricity supply, any offence, if detected, such principles of criminal liability may be qua 'b' and it cannot be extended against 'a' in mere capacity as the owner of the property. If the criminal liability is extended to the owner of the property when admittedly the property is in occupation of the person other than the owner in whatsoever capacity it may be, it would be not only result into re-writing the principles of criminal liability in absence of any mens rea and other necessary ingredients for fastening criminal liability, but it would also result into miscarriage of justice on the face of it. The law never intends to punish the person, who is not guilty or the person, who cannot be said as guilty on the face of the accusation. If such is permitted, it would, on the face of it, also abuse the process of law."

The dictum laid down in the above judgment would clearly show that if the property is in occupation of the tenant and the tenant is the beneficiary of the alleged offence, he should alone be held responsible under Section 135 of the Act."

Present case also is squarely covered by the decision made by this Court in W.P.No.20433 of 2015 dated 26.07.2016.

7. In view of the above, I respectfully follow the judgment and hold that the impugned order passed by the fourth respondent in Ka. No./Uu.Po/E.Pa/Ko/Niluvai/A/Pa/A/09 dated Nil and the consequential letters dated 18.01.2013 in Ka.No.Uu.Se.Po/Ethil/Arumbakkam/Ko.Abartha Thogai/No.Mugam/2013 dated 18.01.2013 and



Ka.No./Uu.se.Poo/Ethil/Arumbakkam/Ko.AbarthaThogai/No.Mugam/2013 dated 13.02.2013 are not legally sustainable and the writ petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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8. It is submitted by the learned counsel for the petitioner that by virtue of interim direction issued by this Court petitioner has deposited a sum of Rs.5,00,000/- and seeks for refund of the same. However, considering the facts and circumstances, the respondents are directed to adjust the deposited amount in future amounts to be made by the petitioner towards consumption charges.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

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Arumbakkam CEDC/West
Plot No.P 253, Arumbakkam, Chennai-600 106

+1cc to Mr.M.L.Ramesh , Advocate, S.R.No.26098
+1cc to Mr.L.Jai Venkatesh, Advocate, S.R.No.26282

W.P.No.32116 of 2014 &
M.P.Nos.1,2 of 2014

SKM(CO)
CT 24/05/2022