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W.P(MD).No.10338 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 29.11.2022

ORDER PRONOUNCED ON : 06.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR
W.P.(MD).No.10338 of 2013
and MP(MD).No.1 of 2013

M.Rajendran

....Petitioner

Vs

1.The Superintending Engineer
TANGEDCO
Distribution
Tuticorin
Tuticorin District

2.The Assistant Engineer
TANGEDCO
Distribution/Rural/North
Tuticorin
Tuticorin District

....Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records in connection with the impugned order issued by the second respondent, vide his letter in Lr.No.AE/D/R/N/TTN/F.Doc/D.No.380/13/dated 18.03.2013 and quash the same as illegal and arbitrary and consequently direct the second respondent to receive the petitioner's new LT Tariff(V) applications and to give electric connection for the petitioner's buildings situated at Tuticorin District, Mela Arasaradi Village, Survey No.94/1B3, Door Nos.4/253, 4/254, 4/255, 4/256,



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4/257, 4/258, 4/259, 4/260, 4/261 and 4/262 without remitting any dues as required by the impugned order.

For Petitioner : Mr.J.Barathan
For Mr.R.J.Karthick

For Respondents : Mr.S.Deenadhayalan
Standing Counsel

ORDER

The present writ petition has been filed challenging an order passed by the second respondent herein under which he has refused to effect new LT service connection in favour of the writ petitioner on the ground that a sum of Rs.40,09,106/- is pending dues towards theft of energy detected in the premises for which service connection was sought for.

2.The contentions of the petitioner are as follows:

(i).Survey No.94/1B3 having an extent of 2.01 acres was originally owned by one S.P.S.Venkatesan @ Thavamani. From the said owner, the petitioner has purchased an extent of 40 cents under a registered sale deed dated 31.03.2008. After purchase, the petitioner has put up construction in the said property after obtaining mortgage loan from the Bank by depositing title deeds.

(ii).The respondents have lodged a complaint as against the petitioner's vendor and his tenant alleging theft of energy in relation to service connection No.69. According to the petitioner, he is no way connected with



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the said electricity service connection or electricity theft. The service connection number namely S.C.No.69 does not cover the premises which was purchased by the writ petitioner. The buildings that were purchased by the writ petitioner were served with service connection Nos.294 and 295.

(iii).The further contention is that service connection No.69 catered to Door Nos.189 and 210/1. However, the petitioner has purchased Door Nos. 208 to 210 which were served by another service connection Nos.294 and 295. Hence, according to the petitioner, he was no way connected with the service connection No.69 either before purchase or after purchase.

(iv).The petitioner had further stated that the authorities have relied upon Regulation No.17 of Tamil Nadu Electricity Supply Code to contend that if new service connection is sought to be obtained by a purchaser, in such premises, service connection can be effected only after payment of dues attributable to such premises by the applicant. The dues are attributable only to Door Nos.189 and 210/1 which were served by the service connection No. 69 which was the subject matter of theft of energy. Therefore, the premises for which new service connection is sought for is not part of the service connection which was served by service connection No.69 and hence, the demand is illegal.



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3. The learned counsel for the petitioner had contended that the service connection No.69 is said to be the subject matter of theft of energy for the first time on 19.02.2008. The petitioner has purchased another premises on 31.03.2008. The respondent authorities have alleged second theft of energy for the same service connection No.69 on 10.07.2009. Therefore, it is clear that after the petitioner has purchased the property on 31.03.2008, allegations are made in relation to theft of energy with regard to the portion retained by the vendor or already sold by the vendor in favour of a third party. Hence, the petitioner cannot be made liable to pay the said amount arising out of theft of energy for getting a new service connection.

4.The learned counsel for the petitioner had further contended that on 31.03.2008, out of 2.01 acres, the original owner namely Thavamani has sold 40 cents to the writ petitioner and 1.56 acres in favour of one Jebasithar. Only in the property that was sold to Jebasithar, Door Nos.189 and 210/1 were located. The service connection No.69 which is the subject matter of theft of energy was serving only those door numbers. Therefore looking at even from a different angle, such a statutory liability cannot be imposed upon the writ petitioner.

5.The learned counsel had further contended that the respondent authorities have issued a similar demand notice demanding more than Rs.40 lakhs from the said Jebasithar. He had challenged the said notice in



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O.S.No.46 of 2012 before the Principal District Munsif Court, Thoothukudi.

The said suit was decreed on 12.08.2014. The respondent authorities have filed an appeal in A.S.No.99 of 2014 before the Subordinate Court, Tuticorin. The appeal was dismissed on 11.10.2022. Hence, according to the learned counsel for the petitioner, when the Civil Court has declared the demand made by the respondent authorities as against Jebasithar (who had purchased the premises covering service connection No.69 which is the subject matter of theft of energy), the respondent authorities cannot demand the same amount from the writ petitioner.

6.The learned counsel had relied upon a judgment of this Court reported in ***(2016) 1 LW 114 (Kadhariya Oriental Nursery and Primary School and another Vs. The Tamil Nadu Generation and Distribution Corporation Ltd and another)*** and contended that 'premises' means the area where the electricity service connection is provided to a consumer and not the whole area. Therefore, according to the petitioner, only to the premises namely for Door Nos.189 and 210/1 (which was served by service connection No.69), Regulation No.17 could be made applicable and not to the writ petitioner's premises which were not served by service connection No.69 at any point of time. In view of the above said submissions, the learned counsel for the petitioner has prayed for allowing the writ petition.



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Contentions of the Counsel for the respondents:

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7.Per contra, the learned Standing Counsel appearing for the respondents had contended that the property purchased by the writ petitioner as well as the property purchased by Jebasithar are located in Survey No. 94/1B3. The first theft of energy was detected on 19.02.2008. Thereafter, the original owner namely Thavamani in collusion with the writ petitioner had sold a portion of the property to the writ petitioner on 31.03.2008. Even thereafter, theft of energy has taken place for the second time on 10.07.2009. Only a sum of Rs.2,00,000/- has been paid by the tenant utilising the service connection No.69 and in view of the interim orders of this Court, service connection could not be disconnected to service connection No.69. No sub-division has been effected in view of the sale deed executed by the original owner.

8.The learned Standing Counsel had further contended that in view of Regulation No.17(9) of Tamil Nadu Electricity Supply Code, unless the dues are paid, new service connection cannot be effected. In view of the said prohibition, the request of the writ petitioner was rightly rejected by the respondent authorities. The learned Standing Counsel had further contended that proviso to Regulation No.17(9)(a) provides that if the premises has been legally sub-divided, the outstanding dues attributed to such premises can also be divided in proportion to the area covered by the sub-division. A new



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service connection to such a sub-divided area can be effected only on payment of the share of outstanding dues attributable to such sub-divided premises. Hence, according to the learned Standing Counsel, even assuming that the petitioner has purchased only a portion of the premises, he is under a statutory obligation to pay dues as per proportionate land which has been purchased by the writ petitioner. Therefore, the contention of the writ petitioner that they are not at all liable to pay any amount is not legally sustainable.

9.The learned Standing Counsel had further contended that in the present case, the premises is one and the same and before effecting sub-division, the writ petitioner had purchased a portion of the property. On the date, when the second theft of energy has taken place, the property has not been sub-divided. Hence, the question of invoking proviso to Regulation No.17(9)(a) of the Act also does not arise. Therefore, the petitioner is liable to pay entire amount as demanded in the impugned notice. Hence, he prayed for dismissal of the writ petition.

10.I have considered the submissions made on either side and perused the materials available on record.

Discussion:

11.One Thavamani was the owner of 2.01 acres in Survey No.94/1B3.

He had sold 1.56 acres in favour of one Jebasithar on 31.03.2008. On the



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same date, he has sold 40 cents in favour of the writ petitioner. Service Connection No.69 was serving Door Nos.189 and 210/1. The said service connection was being utilised by the tenant of Thavamani for running an ice factory. There was an allegation of theft of energy on two occasions namely 19.02.2008 and 10.07.2009. These two door numbers with service connection No.69 have been purchased by the said Jebasithar and not by the writ petitioner.

12.The writ petitioner had purchased Door Nos. 208 to 210 which were having two service connections namely Service Connection Nos. 294 and 295. There were no allegation of theft of energy with regard to these two service connections. The contention of the respondent authorities is that, though the door numbers are different and the service connections are also different, all the five door numbers are located in the same survey No. namely 94/1B3 and hence, they should be treated as a single premises. Once theft of energy has taken place in a portion of the premises, the purchaser of the other portion of the same premises has to clear the dues proportionate to the share of his purchase before getting a fresh service connection as per Regulation No.17(9) of the Tamil Nadu Electricity Supply Code.

13.The issue that arises now for consideration is that what is the meaning of premises as contemplated under Regulation No.17(9)(a) of Tamil Nadu Electricity Supply Code. The word 'premises' has not been defined in



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the Tamil Nadu Electricity Supply Code. However, the said term has been defined in Tamil Nadu Distribution Code. Regulation No.2(l) of the Tamil Nadu Electricity Distribution Code defines consumer premises which is extracted as follows:

2 (l).”Consumer's premises” means the area served by a service connection:

14.A plain reading of the above said definition clearly establishes that the term consumer premises would mean only the area that is served by a service connection. Therefore, it is clear that the term premises would not include any other adjacent premises which is served by a different service connection. The term would also not include any vacant site which is adjacent to the said premises which is served by a different service connection.

15.In the present case admittedly the service connection No.69 served only Door Nos.189 and 210/1. Only the said service connection was the subject matter of electricity theft on two occasions namely 19.02.2008 and 10.07.2009. Admittedly, the writ petitioner has purchased Door Nos.208 to 210 which are located on the southern side of Door No.189 and 210/1. In fact, a perusal of the sketch filed by the writ petitioner will clearly indicate that the premises are located away from each other and they are not even contiguous. Therefore, it is clear that, any amount due towards theft of energy arising out of service connection No.69, could be demanded only from



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the owner/subsequent purchaser/tenant of Door No.189 or Door No.210/1.

Therefore, the demand made by the respondent authorities to the writ petitioner is not legally sustainable.

16.A perusal of the records indicate that Door Nos. 189 and 210/1 were acquired by the highways department by way of a notification dated 10.02.2009. The petitioner has purchased 40 cents from the owner on 31.03.2008. Only thereafter, the second theft of energy is said to have happened on 10.07.2009. When the petitioner had purchased specific portion of a property on 31.03.2008, he cannot be made liable for some theft of energy with regard to another portion of property which was never owned by the writ petitioner at any point of time.

17.The learned Single Judge of this Court in a Judgement reported in ***(2016) 1 LW 114 (Kadhariya Oriental Nursery and Primary School and another Vs. The Tamil Nadu Generation and Distribution Corporation Ltd and another)*** specifically held in Paragraph No.19 as follows:

“19.In view of the foregoing reasons stated above, the legal question that the 'premises' means the area where the electricity service connection is provided to a consumer and not the whole area, as projected by the respondents herein.”

18.In view of the above said discussion and the judgment of our High Court, it is clear that Regulation No.17(8) or (9) of Tamil Nadu Electricity



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Supply Code are not applicable to the writ petitioner. The petitioner has not purchased the premises in which theft of energy is said to have taken place.

The petitioner is seeking new service connection to a premises which was never served by service connection No.69. Hence, the impugned order demanding payment from the writ petitioner towards theft of energy relating to service connection No.69 is not legally sustainable.

Conclusion:

19.In view of the above said fact, the order impugned in the writ petition is set aside. The respondents are directed to issue new service connection to the writ petitioner without insisting upon any payment that arises out of theft of energy relating to service connection No.69. However, the effecting of service connection shall be subject to the payment of other charges.

20.With the above observation, the writ petition stands allowed to the extent as stated above. No costs. Consequently, connected miscellaneous petition is closed.

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Pre-delivery order made in

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