



W.P.(MD)No.1777 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 07.07.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.1777 of 2017

and

W.M.P.(MD)No.1461 of 2017

S.Venkatraman

... Petitioner

Vs.

1.The Tamil Nadu Generation & Distribution Corporation Limited,
Madurai Electricity Distribution Circle,
Represented by its Superintending Engineer,
Race Course Road,
Madurai-625002.

2.The Assistant Engineer,
The Generation & Distribution Corporation Limited,
Distribution / Arasamaram,
Madurai-625009.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order dated 21.12.2016 in reference number உ.மி.பொ/ப/அரசு/கோ.மின் திருட்டு/அ.எண் 428/16 passed by the second respondent and quash the same and consequently, forbearing the respondents from demanding the liability of unknown persons Dhanapal and Saravanan in the electricity Service Connection No.GF 716 from the



W.P.(MD)No.1777 of 2017

petitioner by including the same in the monthly electricity consumption charges in the electricity service Connection No.036-005-1783 standing in the name of the petitioner.

For Petitioner : Mr.T.R.Jeyapalam

For Respondents : Mr.S.Deenadhayan

Standing Counsel

ORDER

Heard the learned counsel appearing for the petitioner and the learned standing counsel appearing for the respondents.

2. The writ petitioner purchased the petition mentioned property under two deeds of sale dated 21.01.2008 from one R.K.Muthu @ K.Kalimuthu and Narayanan. The property originally belonged to one Coolu Servai. His tenants Dhanapal and Saravanan allegedly committed energy theft in the year 2001. Since the assessment charges were not paid, the electricity connection that stood in the name of the tenants was disconnected. While so, by the impugned communication dated 21.12.2016, the assessment charges which were levied on the said tenants Dhanapal and Saravanan have been included in the petitioner's current consumption bill. Questioning the same, this writ petition has been filed.



W.P.(MD)No.1777 of 2017

WEB COPY

3. The primary contention of the learned counsel appearing for the petitioner is that the petitioner being a subsequent purchaser cannot be burdened with the liability of his vendor's vendor's tenant.

4. Per contra, the learned standing counsel appearing for the respondents relied on Clause 17 (9)(a) of the Tamil Nadu Electricity Supply Code, 2004. He also submitted that the arrears in question constitute statutory dues and they are not merely contractual in nature. He relies on the decision of the Hon'ble Supreme Court rendered in ***Civil Appeal No.1815 of 2020 (Telangana State Southern Power Distribution Company Limited Vs. M/s.Srigdhaa Beverages)*** for the proposition that liability to clear the electricity dues runs with the land owner. He pointed out that this decision has been followed by this Court in W.P.No.13672 of 2020 dated 29.06.2021 (***M/s.Virgin Manufacturing Industries Private Limited Vs. The Chairman and Managing Director, Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO)***). He called upon this Court to dismiss this writ petition.



W.P.(MD)No.1777 of 2017

WEB COPY

5. I carefully considered the rival contentions and went through the materials on record. Clause 17(9)(a) of the Tamil Nadu Electricity Supply Code, 2004 reads as under:-

“17. Agreement with respect to supply: Issues on recovery of charges:

(9)(a). In case of service connections in a premises, which have been disconnected / dismantled for defaults in payment of dues whatsoever and if such service connection are to be connected or new service connections are to be obtained by other persons in such premises either by purchase or transfer or lease basis, the Distribution Licensee shall reconnect such service connections or effect new service connections, as the case may be, in such premises only after payment of dues attributed to such premises by the applicant.”

6. The expression 'premises' occurring in the aforesaid regulation was construed by a learned Judge of this Court in the decision reported in ***2016-1-L.W.114 (Kadhariya Oriental Nursery and Primary School Vs. The Tamil Nadu Generation and Distribution Corporation Limited, Madurai Electricity Distribution Circle)***. It was held therein that the expression 'premises' means area where electricity service connection is provided to a consumer and not the whole area.



W.P.(MD)No.1777 of 2017

WEB COPY

7. *Prima facie*, the decision of the Hon'ble Supreme Court in ***Telangana State Southern Power Distribution Company Limited Vs. M/s.Srigdhaa Beverages (Civil Appeal No.1815 of 2020)*** and the decision reported in ***2016-1-L.W.114 (Kadhariya Oriental Nursery and Primary School Vs. The Tamil Nadu Generation and Distribution Corporation Limited, Madurai Electricity Distribution Circle)*** would support the stand taken by the learned standing counsel.

8. But as rightly pointed out by the learned counsel appearing for the petitioner, this provision was inserted in the supply code only with effect from 18.03.2011. The liability in this case arose way back in the year 2000 ie., even before the Electricity Act, 2003 came into force.

9. Therefore, the issue that has arisen in this case will have to be considered only with reference to the position that obtained under the earlier Act and not the new Act. The issue is *no longer res integra*. The Hon'ble Supreme Court in the decision reported in ***(2012) 13 SCC 479 (Special Officer Vs. Raghunath Paper Mills Private Limited)*** had authoritatively held that the subsequent purchaser cannot be fastened



W.P.(MD)No.1777 of 2017

WEB COPY

with the liability incurred by his vendor. In fact, In ***Special Officer Vs. Raghunath Paper Mills Private Limited (2012) 13 SCC 479***, the Hon'ble Supreme Court followed the decision of the three Judges Bench of the Hon'ble Supreme Court in ***Isha Marbles Vs. Bihar SEB (1995) 2 SCC 648***. Therefore, the impugned demand laid on the writ petitioner is patently illegal and without jurisdiction. It stands quashed. It is stated that the petitioner had remitted a sum of Rs.50,000/- by way of complying with the interim order passed by this Court. The said amount shall be adjusted against the petitioner's future liability.

10. The writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

07.07.2022

Index : Yes / No
Internet : Yes/ No
rmi

G.R.SWAMINATHAN,J.



WEB COPY



W.P.(MD)No.1777 of 2017

rmi

W.P.(MD)No.1777 of 2017
and
W.M.P.(MD)No.1461 of 2017

07.07.2022