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W.A.No.3928 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.09.2023

Delivered on: 08.11.2023

CORAM:

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MR.JUSTICE P.B.BALAJI**

**W.A.No.3928 of 2019
and
C.M.P.No.2470 of 2019**

- 1.The Chairman
Tamil Nadu Electricity Board,
Anna Salai, Chennai-600 002.
- 2.The Chief Engineer,
CEDC/North, TNEB,
No.791, Anna Salai,
Chennai – 600 002.
- 3.The Superintending Engineer,
CEDC/North, TNEB,
No.791, Anna Salai,
Chennai – 600 002.
4. The Executive Engineer,
Operation and Maintenance,
Panchetti, TNEB, Panchetti,
Tiruvallur District.



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5.The Assistant Executive Engineer,

Operation and Maintenance,

Panchetti, Tiruvallur District.

.. Appellants / Respondents

Vs.

M/s.Vellammal Institute of Technology,

Rep. by its Chairman,

“Velammal Knowledge Park”,

Chennai – Kolkatta Highways,

GNT Road, Panchetti,

Thiruvallur District.

.. Respondent / Petitioner

Prayer:- Appeal filed under Section Clause 15 of Letter of Patent, against the order, dated 25.01.2019 passed by the learned Single Judge, in W.P.No.67 of 2016.

For Appellants : Mr.P.Wilson, Senior Counsel
for Mr.L.Jaivenkatesh Standing Counsel
For Respondent : Mr.M.L.Ramesh

JUDGMENT

(Judgment of the Court was made by **P.B.BALAJI,J.**)

The Electricity Department being aggrieved by the order in W.P.No.87 of 2016 is the appellant before us.



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2. The respondent herein, as writ petitioner approached the Writ Court, seeking issuance of Writ of a Certiorarified Mandamus, to quash the proceedings dated 30.06.2014.

3. The case of the writ petitioner was that they had obtained a low tension electricity connections for their hostel building. While so, the Electricity Department had issued a notice, calling upon the writ petitioner to get the existing Low Tension Consumer Tariff connections (hereinafter called as LTCT) converted as one High Tension (herein after called as HT) electricity connection because the Electricity Board was sustaining loss. Considering the said request of the Board, the writ petitioner sought for conversion of its existing two LTCT connections into a single HT connection on 20.11.2013. The third respondent vide letter No.SE/LEDL/N/AEE/DEV/AF/D2/FHT Velammal new/D1686/13, dated 27.11.2013, required certain compliances to be made before the conversion.

4. According to the writ petitioner, the compliance were also duly carried out. However, thereafter, on 28.01.2014, the Board raised an objection stating that the erstwhile owner of the property, namely,



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M/s.Viswas Carbite held a HT Connection which was disconnected, after detection of theft and consequently, a provisional assessment was also made. It is also the case of the writ petitioner that the said M/s.Viswas Carbite was never the owner of the property. The writ petitioner has set out the title to the subject property and as to how they came to occupy the subject property. According to the writ petitioner, there were no superstructures standing on the land when the vendors / predecessors-in-title purchased the property and even as on date, the land was lying vacant and it is the specific case of the writ petitioner that the property belonging to one, Mr.M.V.M.Sasikumar, is being used by the writ petitioner. It is stated that Mr.M.V.M.Sasikumar purchased the land from Mr.R.Selvadoss, who had, in turn, purchased the property in an auction sale conducted by the Debt Recovery Tribunal. It is also stated that it was mortgaged by one Mr.C.N.Viswanathan and he in turn had purchased from Mr.P.V.Palaninathan, S/o Vadivelu Mudaliar and Jeevakarunyam that was sold to the said Mr.C.N.Viswanathan in the year 1980. Therefore, according to the writ petitioner, M/s.Viswas Carbite was nowhere in the scene and more importantly, the land was always lying vacant and there was no possibility of there being any electricity HT



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connection, much less theft and provisionally assessment made thereof.

5. The said Writ Petition was contested by the appellants herein / respondents on the ground that the Board incurred huge loss because of the theft committed by M/s.Viswas Carbite. The HT connection in HTSC No.1377 was disconnected on 21.02.1997 and in terms of the regulations of the Board, the appellants were entitled to recover the same from the owner of the property.

6. The learned Single Judge, after hearing the parties, held that the writ petitioner is claiming under an auction purchaser in a public auction and cannot be considered as a “Debtor” within Section 2(3) of the Tamil Nadu Electricity Board (Recovery of Dues) Act, 1978, and finding that the said view had been confirmed by the Division Bench of this Court in W.A.No.719 of 2014, by its judgment dated 27.01.2015, rejected the claims of the appellant / Board and allowed the Writ Petition.

7. Aggrieved by the order passed by the Writ Court, the appellants have filed the Writ Appeal, on the following grounds:

Clauses 17(8) & 9 (a) of the Tamil Nadu Electricity Supply Code, 2004



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provided for insisting on clearance of dues, when applications were made for re-connection of disconnected or dismantled connection; the writ petitioner sought for new service connection on 20.11.2013, on which date, Clauses 17(8) & 9 (a) of the Tamil Nadu Electricity Supply Code, had already come into force on 18.03.2003 and therefore, the writ petitioner cannot claim any exemption; the Board is entitled to refuse to supply electricity to an intending consumer, who defaulted in payment of dues to the Board, including dues in respect of disconnected service; the Writ Court failed to note that the Hon'ble Supreme Court in 2009-SCC-210, held that the Board is well within its rights to stipulate conditions to a proposed consumer who seeks supply, including the arrears due with regard to the supply of electricity made to the premises, even by an occupant or previous owner/occupant and that the arrears can be collected/demanded from the purchaser / consumer seeking new connections.

8. We have heard Mr.P.Wilson, learned Senior Counsel for Mr.L.Jaivenkatesh, learned counsel for the appellants, and Mr.M.L.Ramesh, learned counsel for the respondent.



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9. Mr.P.Wilson, learned Senior Counsel for the Tamil Nadu Electricity Board would submit that the respondent / writ petitioner is bound to clear the arrears which was on account of theft of energy in respect of a service connection in the very same property, though committed by a different person, namely, M/s.Viswas Carbite. When the respondent had made an application for demand of 600 KVA @ 11KVA, on 28.03.2014, the existing service connection to the said property had already been disconnected. He placed reliance on the recent decision of the Hon'ble Supreme Court in the case of ***K.C.Ninan V. Kerala State Electricity Board*** reported in ***2023-SCC-OnlineSC-663***, where the Hon'ble Supreme Court has held that the conditions of Supply and Electricity Supply Code requiring the payment of electricity dues of a previous owner as a condition for the grant of an electricity connection, to have a clear nexus to the scheme of the parent legislations and the objectives sought to be achieved. It is just and reasonable for distribution licensees to specify conditions to supply, requiring the subsequent owner or occupier of premises to pay the arrears of electricity dues of the previous owner or occupier as a pre-condition for the grant of an electricity connection and



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that the same is not bad in law. The Hon'ble Supreme Court has also held that even in case of public auction sale, auction purchasers cannot contend that they were oblivious of the existence of outstanding electricity dues and therefore, cannot plead the same as a defence to the demand made by the Board.

10. Mr.P.Wilson, learned Senior Counsel for the appellants would also contend that the assessment orders dated 4.07.1994 and 18.02.1995 issued to M/s.Viswas Carbite became final and in view the finality of the proceedings, it is not open to the writ petitioner to seek for those assessment orders to be ignored and seek for exemption from the payment of outstanding dues to the appellants. The learned Senior Counsel would further state that the arrears are amounting to more than Four Crores and non-realisation of the said arrears would affect the appellants' financial position and the writ petitioner being a commercial entity, is bound by the Tamil Nadu Electricity Distribution Code, 2004 and therefore, they cannot seek to escape from liability, citing that it was only an energy theft by an erstwhile consumer, viz., M/s. Viswas Carbites.

11. The learned Senior Counsel would take us through Clauses



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17(8) & 9 (a) of the Tamil Nadu Electricity Supply Code, 3rd proviso to Clause 27(1) of the Tamil Nadu Electricity Distribution Code, 2004 and Clause 6.10 of the terms and conditions, which too enabled the appellants to insist on payment of dues and contended that such rights being available under statute and regulations having statutory character, the Courts should not encourage claims of subsequent transferees.

12. Per contra, the learned counsel for the respondent / writ petitioner would submit that the writ petitioner was already enjoying two LTCT service connections and only at the request of the appellant Board, the respondent chose to seek conversion of the same to a single HT service connection. There has been no disconnection as the electricity connection is being enjoyed by the respondent and the respondent has also not applied for any new connection and it is only 2 LTCT service connections sought to be converted into a single HT connection.

13. Mr.M.L.Ramesh, learned counsel for the respondent would also contend that the Tamil Nadu Electricity Distribution Code, 2004 deals with re-connection or new service connection in respect of service



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connections which have been disconnected only and in the facts of the present case, there had been no disconnection / re-connection or fresh service connection and therefore the appellant cannot insist on the respondent herein to clear the dues of an erstwhile consumer. The learned counsel would also contend that the LTCT service connections are only in the name of the writ petitioner and the purchaser of the property is M.V.M.Sasikumar and moreover, the LTCT service connections were in respect of a totally different property which was not subject matter of the original auction sale made by the Debt Recovery Tribunal, which alone is the premises, even according to the appellants where there was a theft of energy. The learned counsel would also rely on the decision of this Court, in ***Kadhariya Oriental Nursery and Primary School V. Tamil Nadu Generation and Distribution Corporation Ltd.***, reported in ***2015-8-MLJ-555***, where a learned Single Judge of this Court has discussed the term "premises". The Electricity Act, 2003, defines "Premises" to include any land, building or structure. In the Tamil Nadu Electricity Distribution Code, 2004, Chapter 1,2 (1) defines, consumer's Premises, as the area served by a service connection. By way of refuting the arguments of the learned Senior Counsel, Mr.M.L.Ramesh, learned counsel for the



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respondent would state that in the facts of the present case, the sale certificate issued by the Debt Recovery Tribunal was registered on 01.09.2003 with the Sub Registrar and clearly, it does not stipulate that the sale was made in an "as is where is basis". He would refer to the ratio of the Supreme Court and contend that the decision was on different facts and would not apply to the facts of the present case, since the Hon'ble Supreme Court has proceeded on the footing that where premises was sold on auction / sale, generally it would only be on "as is where is basis" and therefore, all existing obligations would also fall on the shoulder of the purchasers. He would draw our attention to paragraph No. 143 of the said judgment which are reproduced for easy reference:

"143. Thus, the implication of the expression "as is where is" or "as is what is basis" or "as is where is, whatever there is and without recourse basis" is not limited to the physical condition of the property, but extends to the condition of the title of the property and the extent and state of whatever claims, rights and dues affect the property, unless stated otherwise in the contract. The implication of the expression is that every intending bidder is put on notice that the seller does not undertake any responsibility to procure permission in respect of the property offered for



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sale or any liability for the payment of dues, like water/service charges, electricity dues for power connection and taxes of the local authorities, among others."

14. Therefore, Mr.M.L.Ramesh, would contend that when there is no such clause in the sale certificate issued in favour of the respondent, the appellant Board cannot impose an onerous condition by calling upon the respondent to clear the arrears of dues, that too, which arose on account of an assessment consequent to detection of theft of energy by an erstwhile consumer, who admittedly had nothing to do with the owner of the subject property. Moreover, it is also the specific contention that the respondent is not the owner of the property and the property was purchased by one Mr.M.V.M.Sasikumar only and the same is only being used by the respondent for the purpose of a pathway to reach its institution. He would finally contend that the decision of the Hon'ble Supreme Court in the case of ***K.C.Ninan V. Kerala State Electricity Board*** reported in ***2023-SCC-Online SC-663*** was sought to be applied incorrectly and the appellant Board wants to claim arrears, that too, on account of theft of energy that was alleged to have been committed more than two decades ago and in



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such circumstances, it is not open to the appellant Board to even invoke the provision of Electricity Act, 2003 and only the provisions of Act, 1910 would apply and if at all, they want to recover any alleged dues, it can be only by way of a suit and not by imposing conditions on subsequent consumers who seek fresh connection or re-connection, which any way was not the case on hand, since it was only a case of conversion. He would also state that the decision of the Division Bench of this Court in the case of *Assistant Engineer, TNEB, V.Sabasthi Ammal* still holds the field. Insofar as the facts of the present case, he would contend that the Board cannot place any reliance on the decision of the Hon'ble Supreme Court in *Haryana State Electricity Board V. Hanuman Rice Mills, Dhanauri* reported in *2010-9-SCC-145*, where the Hon'ble Supreme Court held that the statutory rules or terms and conditions of supply which are statutory in character, authorize the supplier of electricity, to demand from the purchaser of a property claiming re-connection or fresh connection of electricity, the arrears due by the previous owner / occupier in regard to supply of electricity to such premises. The learned counsel for the respondent would primarily attempt to drive home the point that the respondent never sought for re-connection or a new service connection in



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the premises where the appellant alleges theft of energy and there was alleged disconnection of service connection.

15. Having heard the learned Senior Counsel for the appellant Board as well as the respondent and having perused the materials placed on record by way of typed sets, written submissions, as well as the order in the Writ Petition, at the outset, we bear in mind, while deciding the issue in the writ appeal that the writ petitioner did not come to Court claiming that he was the owner of the premises, where the electricity service connection had been provided by the appellant Board. On the contrary, it was the specific case of the writ petitioner that he had two subsisting LTCT service connections in respect of which, there was absolutely no default in payment of charges or the security deposit demanded by the Board, for that matter. It was the specific case put forth by the writ petitioner that it was the fifth respondent, namely, Assistant Executive Engineer, Operation and Maintenance, Panchetti, Thiruvallur District, who had called upon the writ petitioner to convert the existing two LTCT service connections into one HT service connection citing that the Board had sustained heavy loss and if such conversion was obtained, then suitable action could be taken



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thereof. The said request of the writ petitioner for conversion of two LTCT service connections into one HT service connection, was also duly processed by the third respondent in the writ petition, namely, the Superintending Engineer, CEDC/North, TNEB, Anna Salai, Chennai, and the compliances sought for were also duly made by the writ petitioner. Only thereafter, the Superintending Engineer has raised an issue of outstanding dues payable by erstwhile consumer, M/s.Viswas Carbite against whom energy theft proceedings had been initiated and assessment had also been made. Citing this, the writ petitioner was called upon to clear the entire arrears as a pre-condition for conversion of two LTCT service connections into one HT service connection. The writ petitioner sent a reply stating that the application was only for conversion, that too, acting on the letter of the Assistant Executive Engineer - fifth respondent in the writ petition and that the property was always vacant land with no building, much less enjoying any electricity connection. In short, the demand for payment of the arrears of energy sought for charges was disputed by the writ petitioner. However, the Superintending Engineer on 05.04.2014, rejected the said contention of the writ petitioner and reiterated the demand made earlier, to which, the writ petitioner sent



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another reply on 13.06.2014. Notices were exchanged by the third appellant and the respondent which forced the writ petitioner to approach this Court challenging the final demand letter dated 30.06.2014.

16. At the outset, we are able to see that the facts of the present case are quite peculiar. The owner of the premises is not the consumer. The writ petitioner is a consumer who already had two subsisting LTCT service connections. Only at the behest of the authorities of the Electricity Board, stating that if the two LTCT service connections could be merged into one HT service connection, it would help the appellant Board's finances as the Board was suffering huge loss, the respondent chose to process such request of the Electricity Board officials. Therefore, at no point of time, the Electricity Supply being enjoyed by the respondent was disconnected or dismantled during the time of request for change over to one HT service connection being initiated or processed. It is the case of the appellant Board that arrears in respect of an earlier service connection remains uncleared. What all is contended by the appellant is that in respect of the premises in which the service connections are sought to be upgraded to HT service connection, the Board had already made an assessment of



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energy theft and levied an amount payable by the then consumer, M/s.Viswas Carbite and that the said assessment order not having been challenged, it was not open to the respondent to by-pass the same and state that the respondent is not liable to pay the said arrears of energy theft charges determined by way of an assessment at the hands of the Board officials. One another relevant circumstance which needs to be addressed is the fact that the two LTCT service connections were only in the name of the writ petitioner and not in the name of the owner of the premises Mr.M.V.M.Sasikumar. Moreover, admittedly, the LTCT service connections have been provided for the building which is situated in Survey Nos.21/1/1B 5A/5B and 6B. This property is entirely different and distinct from the property sold in auction by the Debt recovery Tribunal in respect of which, the appellant Board claims that there was an existing service connection in the name of M/s.Viswas Carbite and that the said service connection was disconnected on detection of theft of energy from the said consumer.

17. We have noticed that the respondent has not sought for a new service connection with a maximum demand of 600 KVA, but, it is only a



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case of its existing two LTCT service connections being converted into a single HT service connection. Moreover, the property in which the said two LTCT service connections are situated is also not the property in which the theft of energy was detected and service connection disconnected thereafter. The respondent is not even the owner of the property and admittedly, one, Mr. M. V. M. Sasikumar is the owner of the property of the premises in which it is claimed by the appellant Board that there was an existing service connection and that the same came to be disconnected on account of theft of energy detected by the Board officials. In the light of the peculiar facts, we are unable to accept the arguments of the learned Senior Counsel for the appellant that the appellant has a right to refuse the switch over and that they also have a right to insist on the respondent to pay the arrears on the assessment already made against M/s. Viswas Carbite.

18. Though the learned Senior Counsel would take us to various clauses of Tamil Nadu Electricity Supply Board especially Clauses 17 (8) and (9) (a), we are not able to see anything that covers a case of this nature. Clauses 17 (8) and (9) (a) speak about only cases where the consumer has



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more than one service connection and he was in default in respect of any of the service connections, then all the service connections can also been disconnected till the entire arrears are paid. The other category of cases covered in said Clause 17 (8) and (9) are cases where service connections have been disconnected, dismantled for default in payment of dues and where such service connection are sought to be reconnected or sought to be obtained by any other persons, on transfer or lease, then re-connection or fresh service connection would be effected only on payment of the earlier dues to the appellant. As already discussed, the same cannot be applied to the facts of the present case for the simple reason that there is no disconnecting or dismantling involved and also there is no re-connection or fresh connection sought for by the respondent. The respondent only sought to convert existing and subsisting two Low Tension Service connections to one single High Tension service. The clauses to which our attention was drawn by the learned Senior Counsel for the appellant would not cover a case of this nature, where there are no dues in respect of existing service connections and there has been no disconnection of the said connections and was only a case of mere conversion of low service tension to High Tension service connection.



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19. Even the Hon'ble Supreme Court in ***Haryana State Electricity Board V. Hanuman Rice Mills, Dhanauri*** referred supra only discussed a request of a purchaser claiming reconnection /fresh connection. Therefore, the said ratio laid down by the Hon'ble Supreme Court would not apply to the facts of the present case. Even insofar as the ratio of the Hon'ble Supreme Court in ***K.C.Ninan's*** case, the Hon'ble Supreme Court approved all the conditions of supply and the terms of electricity supply and thereby paved the way for the appellant Board to insist on a subsequent owner of the property to clear all the arrears of electricity dues of a previous owner or occupier, before effecting electricity service connection. Even in the judgment relied on by the Senior counsel for the appellant in the case of ***Dakshin Haryana Bijli Vitran Nigam Ltd. V. Paramount Polymers (P)Ltd.***, reported in ***2006-SCC-Online SC-1082***, the Hon'ble Supreme Court held that the Board is not a commercial entity and they are entitled to ensure that they get to undertake necessary activities and that in such a process, a pre-condition insisted upon for recovery of arrears from the transferee cannot be said to be unreasonable. Even in the arguments of the learned counsel for the



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appellant, referring to Clause 6.10 of the terms and conditions of the Tamil Nadu Electricity Board, it is seen that the Board is empowered, in case of transfer of ownership of such terms on the transferee to become entitled to a new connection only when the new owner or occupier clears the entire arrears due by the previous owner. Even Clause 21(a) of terms and conditions of supply of electrical energy speaks about the transfer of ownership and a right of disconnection. When a transfer is not intimated to the Board within 15 days of such transfer, then the supply can be disconnected and it also stipulates re-connection and new connection to be affected only on payment of arrears due, in respect of the said premises.

20. Therefore, the terms and conditions as well as the Tamil Nadu Electricity Supply Board on which reliance is placed on, deal with instances where a subsequent purchaser or occupier of a premises seeks a fresh connection or a new connection or re-connection, then, the Board has every right to insist on the clearance of pending arrears of the previous owner or occupier.

21. We are unable to accept the argument of the learned Senior



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Counsel for the appellant that the terms and conditions should be extended even to the facts of the present case. We are afraid, this cannot be done for more than one reason. Firstly, the premises itself is different. In fact, on going through the judgment of the Hon'ble Supreme Court and also terms and conditions and the provisions of the Tamil Nadu Electricity Board, 2004, we find that reference is only to “such permises”. Therefore, fundamentally, the Board is entitled to seek clearance of arrears of dues of a previous consumer or owner, only in respect of the very same premises. Here, admittedly, the premises is not the same. The premises in which low tension service connections are subsisting in the name of the respondent is different from the premises where the theft of energy has been detected. It is not the case of the appellant Board also that two LTCT service connections to the respondent / writ petitioner have been disconnected on detection of theft. Further, the contention of the learned counsel for the respondent / writ petitioner that it is only at the request of the Board officials, citing that the Board is running under loss and it would be beneficial if the two LTCT service connections, were merged into a single HT Service connection, the respondent proceeded to seek conversion, cannot also be lightly brushed aside.



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22. With regard to the premises also, it is seen that the property in respect of which the demand of theft of energy is sought for, is not owned by the writ petitioner, but, only by one Mr.M.V.M.Sasikumar. The two Low Tension service connections are also in the name of the writ petitioner and not inside the said premises belonging to Mr.M.V.M.Sasikumar, where theft was detected and service connection disconnected. Though the learned Senior Counsel for the appellant would contend that the respondent is an occupant of the entire lands being adjacent survey Numbers and is using the same as a single entity and cannot contend that he is not using the property and there is no building or service connection in the said property and that no theft has been detected in the said property and it is used as a passage, it is seen that the property in respect of which the theft of energy was initially detected was commercial in nature and was the subject matter of the property sold in public auction by the Debt Recovery Tribunal, Chennai. Subsequently, the said property changed hands and is presently owned by one Mr.M.V.M.Sasikumar and the same is situated in Survey Nos.21/1A2A1A, 21/1A2A1B. Whereas, two LTCT service connections provided to the



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respondent/writ petitioner are in respect of an adjoining premises in Survey Nos.21/1A4B, 5A, 5B and 6B. Therefore, applying the definition of “premises” we do not deem it proper to extend its definition beyond the premises in which the service connection given to M/s.Viswas Carbite was disconnected and in respect of which alone, demand has been made and there are dues to the tune of Rs.4,00,000,000/- and odd.

23. Insofar as the contentions of the counsel for the respondent with regard to the sale on, 'as is where is basis' condition, we do not deem it fit to go into the aspect for the reason that the premises in respect of which disconnection has been effected on account of non payment of dues consequent to detection of theft is not the property purchased by the respondent / writ petitioner and also not the property in respect of which, the conversion of two LTCT service connections are sought to be converted to a single HT service connection. In fine, we are in agreement with the findings of the learned Single Judge and the order of the Writ Court does not warrant any interference.



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24. In fine, the Writ Appeal stands dismissed. However, we make it clear that the appellant Board is at liberty to work out its remedy as against the subsequent purchaser / present owner in respect of the premises in which the connection has been disconnected and if and when any request for re-connection or fresh connection in respect of such premises is sought for, the appellant Board is well within the rights to make it a pre-condition to pay all arrears in respect of the earlier service connection. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

(D.K.K.J.) & (P.B.B.J)
08.11.2023

Internet : Yes
Index: Yes/No
Neutral Citation: Yes/No
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and
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LS/KPR

pre- delivery judgment in
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