IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.27023 of 2018

S.N.Thangavel ... Petitioner

Vs.

The Superintending Engineer
Salem Electricity Distribution Circle,
Salem – 636 014. ... Respondent

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records relating to the impugned letter of the respondent dated 31.10.2017, made in Letter.No.SE/SEDC/AOR/HT/A-4/F.HTSC.186/D.322/17, to quash the same.

For Petitioner : Mr.Arul Murugan

For Respondent : Mr.J.Ravindran
Additional Advocate General
Assisted By
1)Mr.I.Syed Sibghadulla
2)M/s.R.Rebecca Vasanthini Percy

O R D E R

The petitioner has filed this writ petition seeking issuance of

Writ of Certiorari to call for the records relating to the impugned letter of the respondent dated 31.10.2017, made in Letter.No.SE/SEDC/AOR/HT/A-4/F.HTSC.186/D.322/17, to quash the same.

2.The case of the petitioner is that the petitioner is the owner of the property measuring 2.38 acres together with a shed bearing present patta no.56 in re-survey no.73/2 situated at Naduvaneri Village, Sankari Taluk, Salem District and he purchased the same through proceedings of the Debt Recovery Tribunal, Coimbatore vide sale certificate registered as document no.5437 of 2010 on the file of S.R.O., Magudanchavadi for a valuable sale consideration of Rs.27,41,000/-.

3.The further case of the petitioner is that the property originally belonged to M/s.Veerappan Steels (P) Limited and the petitioner came to know that the electricity service connection was disconnected by the respondent for non payment of current consumption charges and the accounts of the service was closed on 16.08.2004 duly adjusting the security deposit and meter caution deposit and the petitioner was not informed at any point of time about the liability of M/s.Veerappan

Steels (P) Limited. However, after a lapse of seven years from the date of purchase of the property, the respondent has issued the impugned letter directing the petitioner to pay a sum of Rs.3,00,97,729/- for the default in payment of charges by the said M/s.Veerappan Steels (P) Limited. Hence, this writ petition.

4.The learned counsel appearing for the petitioner submitted that the electricity board disconnected the electricity service connection obtained by M/s.Veerappan Steels (P) Limited for non payment of current consumption charges and the accounts of the service was closed on 16.08.2004. The petitioner purchased the property through Debt Recovery Tribunal, Coimbatore vide sale certificate registered as document no.5437 of 2010 and after a lapse of seven years from the date of purchase of the property, the impugned order has been passed, which is un-sustainable one.

5.In support of his contentions, the learned counsel appearing for the petitioner relied upon the following decisions:

(i)***(1995) 2 Supreme Court Cases 648 [Isha Marbles Vs. Bihar State Electricity Board and another]***, the relevant portion of which reads as follows:

> *"56.From the above it is clear, the High Court has chosen to construe Section 24 of the Electricity Act correctly. There is no charge over the property. Where that premises comes to be owned or occupied by the auction purchaser, when such purchaser seeks supply of electric energy he cannot be called upon to clear past arrears as a condition precedent to supply. What matters is the contract entered into by the erstwhile consumer with the Board. The Board cannot seek the enforcement of contractual liability against the third party. Of course, the bona fides of the sale may not be relevant.*
>
> *57.The form of requisition relating to the contract is in Annexure VIII prescribed under Clause VI of the Schedule to the Electricity Act. They cannot make the auction purchaser liable. In the case of Isha Marbles we have already extracted the relevant clause wherein the consumer was asked to state his willingness to clear off the arrears to which the answer was in the negative. Therefore, the High Court has rightly held that the auction purchaser, namely, "the writ petitioner before us is ready and willing to enter into a now contract that the auction purchaser does not intend to obtain*

> *the continuance of supply of electrical energy on the basis of the old agreement". It Is true that it was the same premises to which reconnection is to be given. Otherwise, with the change of every ownership new connections have to be issued does not appear to be the correct line of approach as such a situation is brought about by the inaction of the Electricity Board in not recovering the arrears as and when they fall due or not providing itself by adequate deposits."*

(ii)***(2012) 13 Supreme Court Cases 479 [Special Officer, Commerce, North Eastern Electricity Supply Company of Orissa (NESCO) and another Vs. Raghunath Paper Mills Private Limited and another]***, the relevant portion of which reads as follows:

> "11.Now, let us consider the relevant provisions of the Orissa Electricity Regulatory Commission Distribution (Conditions of Supply), Code, 2004 (in short 'the Electricity Supply Code'). Sub-clause 10 of Regulation 13 of the Electricity Supply Code is as follows:-
>
> "(10) Transfer of service connection:-
>
> (a)Subject to the Regulation 8, the transfer of service connection shall be effected within 15 days from the date of receipt of

complete application.

(b)The service connection from the name of a person to the name of another consumer shall not be transferred unless the arrear charges pending against the previous occupier are cleared:

Provided that this shall not be applicable when the ownership of the premises is transferred under the provisions of the State Financial Corporation Act."

It is the case of the appellant that as per the above provision, viz., sub-clause 10(b) of Regulation 13 of the Electricity Supply Code, unless respondent No. 1 pays the arrears of electricity dues against the erstwhile company, electricity supply cannot be restored to its Unit. We are of the view that the reading of the above sub-clause makes it clear that the said provision is not applicable to respondent No. 1. We have already quoted that respondent No. 1, after purchase of the said Unit in an auction sale conducted by the Official Liquidator on "as is where is" and "whatever there is" basis has applied for a fresh service connection for supply of energy (emphasis supplied). In other words, respondent No. 1 has not applied for transfer of service connection from the name of the erstwhile company to its name. To make *it clear, respondent No. 1 applied for a fresh connection for its Unit after purchasing the same from the Official Liquidator. It is also not in dispute that the arrears of electricity dues were levied against the premises in question, on the other hand, it was levied against the erstwhile company.*

17.The learned counsel for the appellant heavily relied on para 12 of the very same judgment which reads as under: (Paschimanchal Vidyut Case)

"12. But the above legal position is not of any practical help to a purchaser of premises. When the purchaser of a premises approaches the distributor seeking a fresh electricity connection to its premises for supply of electricity, the distributor can stipulate the terms subject to which it would supply electricity. It can stipulate as one of the conditions for supply, that the arrears due in regard to the supply of electricity made to the premises when it was in the occupation of the previous owner/occupant, should be cleared before the electricity supply is restored to the premises or a fresh connection is provided to the premises. If any statutory rules govern the conditions relating to sanction of a connection

or supply of electricity, the distributor can insist upon fulfilment of the requirements of such rules and regulations. If the rules are silent, it can stipulate such terms and conditions as it deems fit and proper to regulate its transactions and dealings. So long as such rules and regulations or the terms and conditions are not arbitrary and unreasonable, courts will not interfere with them."

20.In a recent decision, i.e. in Haryana State Electricity Board vs. Hanuman Rice Mills, Dhanauri and Others, (2010) 9 SCC 145, this Court, after referring to all the earlier decisions including Isha Marbles (supra) and Paschimanchal Vidyut Vitran Nigam Ltd. (supra) etc., summarized the position in the following manner which is as under: (Hanuman Rice Mills case)

"12. ….(i) Electricity arrears do not constitute a charge over the property. Therefore in general law, a transferee of a premises cannot be made liable for the dues of the previous owner/occupier.

(ii) Where the statutory rules or terms and conditions of supply which are statutory in character, authorise the supplier of electricity

to demand from the purchaser of a property claiming reconnection or fresh connection of electricity, the arrears due by the previous owner/occupier in regard to supply of electricity to such premises, the supplier can recover the arrears from a purchaser."

(iii)***(2018) 12 Supreme Court Cases 644 [Southern Power Distribution Company of Telangana Limited Through its CMD and others Vs. Gopal Agarwal and others]***, the relevant portion of which reads as follows:

"6.We have heard the learned counsel appearing for the parties and we are of the opinion that there is no reason to interfere with the judgment of the High Court. The High Court relied upon the judgment in Isha Marbles(supra) to grant relief to the First Respondent. It was held in the said judgment that an auction purchaser cannot be called upon to clear the past arrears. It was also held that a power connection to an auction purchaser cannot be withheld for the dues of the past owner. The High Court also referred to a judgment in Ahmedabad Electricity Company Limited(supra) wherein the ratio of

the judgment in Isha Marbles case was reiterated, particularly with reference to a fresh connection for supply of electricity. In NESCO v. Raghunath Paper Mills (P) Ltd., (2012) 13 SCC 479, the purchaser in an auction sale conducted by the official liquidator on "as is where is" and "whatever there is" basis was found not liable for payment of the electricity arrears. In the said case an advertisement was issued by the official liquidator for sale of moveable and immoveable property of M/s Konark Paper and Industries Limited on "as is where is" and whatever there is" basis. The auction purchaser applied for a fresh electricity connection to its unit which was denied on the ground of non payment of arrears by the past owner. After considering the judgments in Ahmedabad Electricity Company (supra) and Isha Marbles (supra), this Court held that the request of the auction purchaser for a fresh connection could not have been rejected."

(iv)***AIR 2019 Chh 200 [Agrawal Structure Mills (Pv5.) Ltd., Through Director Anil Kumal Agrawal vs. Chhattisgarh State Power Distribution Company Limited through Superintending***

Engineer and others], the relevant portion of which reads as follows:

> *"25.The ratio when we apply to this case would show that neither the advertisement nor the sale certificate describes that any encumbrance exist over the property when purchased. As against this the sale certificate shows that property was sold as is where is basis and was shown that it was without any encumbrances and the auction purchaser the petitioner purchased the property on the basis of that premise and advertisement made by bank.*
>
> *26.The purchase was made under the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Sale certificate has been issued in favour of the petitioner under Rule 9(6) of the Security Interest (Enforcement) Rules, 2002 which do not show the property carries a charge for payment of electricity charges. As has been held by this court in WPC No.2700/2017 in between M/s Maheshwari Steels Vs. Chhattisgarh State Power Distribution Company Limited & Ors. decided on 25/01/2018, that if the objection like nature are allowed then in such case the auction sale*

made under the SARFAESI Act would never become final and remain unconcluded and in view of the provisions contained in Section 35 of the SARFAESI Act which has an overriding effect over any law for the time being in force, the auction sale having been made in accordance with the SARFAESI Act and the Rules of 2002 it would prevail over clause 4.19 of the Electricity Supply Code."

(v)The decision of the Madurai Bench of this Court made in ***W.P.(MD) No.1777 of 2017*** dated ***07.07.2022 [S.Venkatraman Vs. The Tamil Nadu Generation & Distribution Corporation Limited]***, the relevant portion of which reads as follows:

"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 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."*

6.Per contra, the learned Additional Advocate General appearing for the respondent submitted that admittedly M/s.Veerappan Steels (P) Limited obtained electricity service connection for the subject property and for non payment of current consumption charges, the electricity service connection was disconnected by the respondent on 16.02.2004. The electricity board sent notices to the erstwhile owner for clearance of arrears, however, the erstwhile owner did not come forward to settle the arrears and most of the notices returned with remark 'party shifted'.

7.The learned Additional Advocate General appearing for the respondent further submitted that as per Regulation 17(9) (a) of the Electricity Supply Code specified by TNERC, the liabilities of the erstwhile owner can be claimed from the purchaser of the premises. In the present case, the petitioner has purchased the property. Though the petitioner has not applied for electricity service connection, he has to pay for the the liabilities of the erstwhile owner.

8.In support of his contentions, the learned Additional Advocate General appearing for the respondent relied upon the following decisions:

(i)***(2006) 13 Supreme Court Cases 101 [Dakshin Haryana Bijli Vitran Nigam Ltd., Vs. Paramount Polymers (P) Ltd.]***, the relevant portion of which reads as follows:

> *"15.We must observe that the decision in Isha Marbles is by itself not an answer to the validity of clause 21A of the terms and conditions inserted by notification. Under section 49 of the Supply Act, the licensee or rather, the Electricity Board, is entitled to set down terms and conditions for supply of electrical energy. In the light of the power available to it, also in the context of Section 79(j) of the Supply Act, it could not be said that the insertion of clause 21A into the Terms and Conditions for supply of electrical energy is beyond the power of the appellant. It is also not merely contractual. This Court in Hyderabad Vanaspati Ltd. Vs. Andhra Pradesh State Electricity Board and others [(1998) 2 S.C.R. 620] has held that the Terms and*

Conditions for Supply of Electricity notified by the Electricity Board under Section 49 of the Electricity (Supply) Act are statutory and the fact that an individual agreement is entered into by the Board with each consumer does not make the terms and conditions for supply contractual. This Court has also held that though the Electricity Board is not a commercial entity, it is entitled to regulate its tariff in such a way that a reasonable profit is left with it so as to enable it to undertake the activities necessary. If in that process in respect of recovery of dues in respect of a premises to which supply had been made, a condition is inserted for its recovery from a transferee of the undertaking, it cannot ex facie be said to be unauthorized or unreasonable. Of course, still a court may be able to strike it down as being violative of the fundamental rights enshrined in the Constitution of India. But that is a different matter. In this case, the High Court has not undertaken that exercise."

(ii)***(2020) 6 Supreme Court Cases 404 [Telangana State Southern Power Distribution Company Limited and another vs. Srigdhaa Beverages]***, the relevant portion of which reads as follows:

"16.1.That electricity dues, where they are statutory in character under the Electricity Act and as per the terms & conditions of supply, cannot be waived in view of the provisions of the Act itself more specifically Section 56 of the Electricity Act, 2003 (in pari materia with Section 24 of the Electricity Act, 1910), and cannot partake the character of dues of purely contractual nature.

16.2.Where, as in cases of the E-auction notice in question, the existence of electricity dues, whether quantified or not, has been specifically mentioned as a liability of the purchaser and the sale is on "as is where is, whatever there is and without recourse basis", there can be no doubt that the liability to pay electricity dues exists on the respondent (purchaser)."

9.Heard the arguments advanced on either side and perused the materials available on record.

10.The facts in the present case is not in dispute. Admittedly, one M/s.Veerappan Steels (P) Limited was the owner of the subject property and they obtained electricity service connection. However, the said concern fell into the debt trap and to realise the debts, action was taken before the Debts Recovery Tribunal and the property was brought for auction in which the petitioner had purchased the property. The said fact is not in dispute. However, when the concern fell into debt, there was pending current consumption charges, which were not cleared. Non-clearance of the current consumption charges resulted in the disconnection of electricity service connection by the respondent on 16.02.2004 and the accounts of the service was closed on 16.08.2004.

11. As aforesaid, it is not in dispute that the petitioner purchased the property through proceedings of the Debt Recovery Tribunal, Coimbatore and the sale certificate was registered as document no.5437 of 2010 on the file of S.R.O., Magudanchavadi for a valuable sale consideration of Rs.27,41,000/-. However, after a lapse of seven years, the impugned letter has been issued by the respondent calling upon the petitioner to pay a sum of Rs.3,00,97,729/- for the default in payment of charges by the said M/s.Veerappan Steels (P) Limited.

12.In the counter affidavit filed on behalf of the respondent, it is stated that after closure of accounts an amount of Rs.89,31,101/- is pending collection from M/s.Veerappan Steels (P) Limited. There is no material available on record to show that any action has been taken by the respondents to collect the amounts due from M/s.Veerappan Steels. Without resorting to any such procedure, the accounts of the said concern was closed and electricity connection was disconnected as early as in the year 2004. The petitioner has purchased the property only in the year 2010. Thereafter, the impugned letter has come to be issued by the respondent asking the petitioner to pay a sum of Rs.3,00,97,729/- being the default in payment of charges by the said M/s.Veerappan Steels (P) Limited.

13.To enforce the collection, the aid of Regulation 17(9) (a) of the Electricity Supply Code specified by TNERC, is sought to be taken by the respondents which provides that the liabilities of the erstwhile owner can be claimed from the purchaser of the premises. However, what is relevant to be noted here is the fact that Regulation 17(9) (a) is applicable only to a person who makes application to effect fresh service connection. In the present case, the petitioner has purchased the property through auction purchase, which premises was already provided with electricity supply. Though the petitioner has purchased the property, the petitioner has not applied for fresh electricity service connection. Hence, Regulation 17(9) (a) is not applicable to the petitioner.

14.The decisions relied upon by the learned Additional Advocate General appearing for the respondent does not apply to the present case on hand for the reason that the vendor who alienated the property has to give three months notice to the electricity board before alienating the property.

15.In ***Isha Marbles case*** the Supreme Court has held that where the premises comes to be owned or occupied by a person, who had purchased the said property in an auction purchase and, thereafter, seeks supply of electrical energy, the said person cannot be called upon to clear the past arrears as a condition precedent to effect supply. The present case on hand is also similar and in such circumstances, the Board cannot seek the enforcement of the contractual liability against the petitioner, who is a third party. Further, it is also to be noted that there is no charge over the property and further change of every ownership does not entail effecting new connection and the inaction of the Board in recovering the arrears, which fell due, cannot be fastened on the auction purchaser, who has no contractual obligation with the Board. Therefore, the order of the respondents calling upon the petitioner to pay the dues of M/s.Veerappan Steels, is perverse and illegal and the same cannot be sustained.

16.For the reasons aforesaid, this writ petition stands allowed. The impugned letter of the respondent dated 31.10.2017 is set aside. No costs.

21.03.2023

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Speaking Order/ Non Speaking Order
Index: Yes/ No
Internet: Yes/ No

To

The Superintending Engineer
Salem Electricity Distribution Circle,
Salem – 636 014.

M.DHANDAPANI,J.

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W.P.No.27023 of 2018

21.03.2023