



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

**W.P.(C) 7540/2023 and CM APPL. 29231/2023**  
**(restoration of electricity connection)**

Date of Decision : 29.05.2023

**IN THE MATTER OF:**

**SAJAUL HASAN**

..... Petitioner

Through: Mr. Ujjwal K. Jha and Mr. B.P. Agarwal,  
Advocates

Versus

**TATA POWER DELHI DISTRIBUTION LTD.**

..... Respondent

Through: Mr. Manish Kr. Srivastava and  
Mr. Sagar Arora, Advocates

**CORAM:**

**HON'BLE MR. JUSTICE MANOJ KUMAR OHRI**

**JUDGMENT**

**MANOJ KUMAR OHRI, J. (ORAL)**

1. By way of the present petition filed under Article 226 of the Constitution of India, the petitioner claims that his wife *Mrs. Sartaj Jabi* has purchased open space admeasuring 101.67 Sq. Yards in property bearing *No.B-32/2, Wazirpur Industrial Area, New Delhi-110052* from one *Ms. Kamlesh Jain* on 22.09.2016 by way of a registered deed of Sale Agreement. The entire plot is statedly admeasuring 604 Sq. Yards and divided in three



parts. The petitioner is the registered consumer of electricity connection having CA No. 60000699813, initially sanctioned in the name of one *Laxmi Narayan*.

2. The petitioner is aggrieved by the assessment order 17.03.2023 whereby demand of Rs.52,20,380/- has been raised by the respondent. Learned counsel for the petitioner submits that the respondent's allegation of the aforesaid connection being feeding the supply on inactive CA No.60006469799 meter space, is not substantiated by any material or documents. In this regard, he has referred to the Inspection Report where neither any photograph nor video were placed on record.

3. Mr. Manish Kr. Srivastava, learned counsel for the respondent has taken a preliminary objection to the entertainability of the present petition in view of the alternate remedy available under Section 127 of the Electricity Act, 2003 (hereinafter, referred to as the 'Act'). He submits that the final assessment order was passed under Section 126 of the Act after giving personal hearing to the petitioner against which an appeal lies before the Appellate Authority under Section 127 of the Act.

4. In view of the preliminary objection raised, this Court proceeds to deal with the same at the first instance. The exact issue under the Act came up before the Supreme Court in The Executive Engineer and Ors. v. Seetaram Rice Mill, reported as (2012) 2 SCC 108 wherein, a three-Judge Bench observed as under:-

*“53. It is a settled canon of law that the High Court would not normally interfere in exercise of its jurisdiction under Article*



*226 of the Constitution of India where statutory alternative remedy is available. It is equally settled that this canon of law is not free of exceptions. The courts, including this Court, have taken the view that the statutory remedy, if provided under a specific law, would impliedly oust the jurisdiction of the Civil Courts. The High Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India can entertain writ or appropriate proceedings despite availability of an alternative remedy. This jurisdiction, the High Court would exercise with some circumspection in exceptional cases, particularly, where the cases involve a pure question of law or vires of an Act are challenged. This class of cases we are mentioning by way of illustration and should not be understood to be an exhaustive exposition of law which, in our opinion, is neither practical nor possible to state with precision. The availability of alternative statutory or other remedy by itself may not operate as an absolute bar for exercise of jurisdiction by the Courts. It will normally depend upon the facts and circumstances of a given case. The further question that would inevitably come up for consideration before the Court even in such cases would be as to what extent the jurisdiction has to be exercised.*

*54. Should the Courts determine on merits of the case or should it preferably answer the preliminary issue or jurisdictional issue arising in the facts of the case and remit the matter for consideration on merits by the competent authority? Again, it is somewhat difficult to state with absolute clarity any principle governing such exercise of jurisdiction. It always will depend upon the facts of a given case. We are of the considered view that interest of administration of justice shall be better subserved if the cases of the present kind are heard by the courts only where it involves primary questions of jurisdiction or the matters which -goes to the very root of jurisdiction and where the authorities have acted beyond the provisions of the Act. However, it should only be for the specialized Tribunal or the appellate authorities to examine the merits of assessment or even factual matrix of the case. It is argued and to some extent*



*correctly that the High Court should not decline to exercise its jurisdiction merely for the reason that there is a statutory alternative remedy available even when the case falls in the above-stated class of cases. It is a settled principle that the Courts/Tribunal will not exercise jurisdiction in futility. The law will not itself attempt to do an act which would be vain, *lex nil frustra facit*, nor to enforce one which would be frivolous? *lex neminem cogit ad vana seu inutilia*? the law will not force any one to do a thing vain and fruitless. In other words, if exercise of jurisdiction by the Tribunal *ex facie* appears to be an exercise of jurisdiction in futility for any of the stated reasons, then it will be permissible for the High Court to interfere in exercise of its jurisdiction. This issue is no longer *res integra* and has been settled by a catena of judgments of this Court, which we find entirely unnecessary to refer to in - detail. ....”*

5. Later in Assistant Commissioner of State Tax and Others v. Commercial Steel Limited reported as **2021 SCC OnLine SC 884**, it was held as under: -

*“11. The respondent had a statutory remedy under section 107. Instead of availing of the remedy, the respondent instituted a petition under Article 226 of the Constitution. The existence of an alternate remedy is not an absolute bar to the maintainability of a writ petition under Article 226 of the Constitution. But a writ petition can be entertained in exceptional circumstances where there is:*

- i) a breach of fundamental rights;*
- (ii) a violation of the principles of natural justice;*
- (iii) an excess of jurisdiction; or*
- (iv) a challenge to the vires of the statute or delegated legislation.*



*12. In the present case, none of the above exceptions was established. There was, in fact, no violation of the principles of natural justice since a notice was served on the person in charge of the conveyance. In this backdrop, it was not appropriate for the High Court to entertain a writ petition. The assessment of facts would have to be carried out by the appellate authority. As a matter of fact, the High Court has while doing this exercise proceeded on the basis of surmises. However, since we are inclined to relegate the respondent to the pursuit of the alternate statutory remedy under Section 107, this Court makes no observation on the merits of the case of the respondent.*

*13. For the above reasons, we allow the appeal and set aside the impugned order of the High Court. The writ petition filed by the respondent shall stand dismissed. However, this shall not preclude the respondent from taking recourse to appropriate remedies which are available in terms of Section 107 of the CGST Act to pursue the grievance in regard to the action which has been adopted by the state in the present case.”*

6. Coming to the facts of the present case, it is noted that the petitioner has raised challenge to the final assessment order, a reading of which would show that it was preceded by inspection, that was followed by the provisional order of assessment under Section 126(1) of the Act dated 26.12.2022 as well as personal hearing on 13.01.2023 which was duly attended by the petitioner. Later, a Show Cause Notice was issued on 17.02.2023 followed by another opportunity of personal hearing on 01.03.2023, the allegations against the petitioner are that he has been found feeding supply to another distinct and separate portion of the aforesaid property from his own electricity connection. The challenge in the writ petition is only factual. The petitioner has simply denied the allegations and contended that the allegation is not supported by any material document.



7. In the considered opinion of this Court, the petitioner's case does not fall in exceptional category and is thus dismissed alongwith the pending application with liberty to the petitioner to approach the appellate authority in terms of Section 127 of the Act.

**(MANOJ KUMAR OHRI)**  
**JUDGE**

**MAY 29, 2023**

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