



WEB COPY



W.P.No.10312 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2024

CORAM :

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.10312 of 2022

and

W.M.P.Nos.10025 & 10026 of 2022

Mr.Karthik Sabanayagam

... Petitioner

Vs

- 1.The Union of India,
Represented by its Secretary,
Department of Revenue,
Government of Puducherry,
Puducherry.
- 2.The District Collector,
Vazhudavoor Road,
Pettaiyanchathiram,
Puducherry-9.
- 3.The Tahsildar,
Villianur Taluk,
Villianur,
Puducherry.
- 4.The Superintending Engineer-I,
Department of Electricity,
Government of Puducherry,
Puducherry.
- 5.M/s.Bhuavaneshwari Chemicals Pvt. Ltd.,
Having its registered office at



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R.S.N94/4, Thirubhuvanai Village,
Puducherry-107.

**(R5 given up and therefore, WP is
dismissed against R5 vide order of
court dated 22.04.2022)**

... Respondents

Prayer: Writ Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records leading up to passing of the order bearing No.1249/TOV/RR/A6/2022 dated 25.02.2022 passed by the 3rd respondent and to quash the same and consequently direct the 3rd respondent to refund the sum of Rs.15,00,000/- already paid by the petitioner in furtherance of orders in M.P.Nos.2 and 3 of 2014 in W.P.No.29600 of 2014 and consequently restrain the respondents from in any manner proceeding against the schedule of property.

For Petitioner : Mr.J.Sivanandha Raj, SC for
Mr.Roshan Balasubramanian
For Respondents : Mr.V.Vasanth Kumar, AGP(P)

ORDER

This writ petition has been filed challenging the order dated 25.02.2022, in and by which, the third respondent directed the petitioner to pay the due amount to the tune of Rs.51,11,144/- together with 12% interest with a default clause and to direct the third respondent to refund the sum of Rs.15 lakhs already paid by the petitioner in furtherance of the order dated 13.01.2015 passed in M.P.Nos.2 and 3 of 2014 in



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W.P.No.29600 of 2014 and also to restrain the respondents from in any manner proceeding against the schedule of property.

2. Heard the learned Senior Counsel appearing on behalf of the petitioner and the learned Additional Government Pleader appearing for the respondents.

3. The facts leading to filing of this writ petition are as follows :

(i) The petitioner is the absolute owner of the property more fully mentioned in the schedule. The petitioner acquired the schedule of property from one M/s.Bhuvaneshwari Chemicals Private Limited at Puducherry (vendor) by virtue of a sale deed dated 09.01.2012 registered as Doc.No.29 of 2012 on the file of the Sub-Registrar, Thirukanur. It was purchased as a vacant land with a small shed without any electricity service connection and a compound wall.

(ii) The third respondent affixed a notice dated 26.05.2014 in Form 4 under Section 25 of the Pondicherry Revenue Recovery Act, 1970 (for short, the Act) on 03.11.2014 in the schedule of property calling upon the vendor of the petitioner to pay a sum of Rs.51,11,144/- towards arrears of electricity consumption charges. In the meantime, on 11.8.2014, the third



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respondent affixed an undated notice in the schedule of property under Section 27 of the Act seeking for attachment.

(iii) Challenging the demand notice dated 26.05.2014, earlier, the petitioner filed W.P.No.29600 of 2014 before this Court. At the time of admission of the said writ petition on 13.01.2015, this Court granted an order of interim stay on condition that the petitioner should pay a sum of Rs.15 lakhs before the third respondent within a period of three weeks. While granting the conditional order of interim stay, this Court made it clear that in case of default, the stay granted by this Court should stand automatically vacated without any further reference to this Court. However, after severe financial constraints, the petitioner was able to deposit the entire amount within the extended time period.

(iv) Ultimately, the said writ petition came to be disposed of by order dated 13.12.2021 with a direction to the petitioner to submit his objections before the third respondent, who was, in turn, directed to consider the same after conducting an inquiry and pass final orders on merits and in accordance with law within a period of four weeks from the date of receipt of such objections.

(v) After receipt of the copy of the order dated 13.12.2021, the petitioner sent his objections dated 09.02.2022 to the third respondent.



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The third respondent sent a communication dated 15.02.2022 requesting the petitioner to attend the personal hearing that was fixed on 22.02.2022 at 12 Noon. In turn, the petitioner sent his written submissions dated 19.02.2022 to the third respondent. The petitioner also sent a letter dated 22.02.2022 to the third respondent informing him that the petitioner purchased the schedule of property with a clear understanding that it was free from any encumbrance and that the vendor of the petitioner had not disclosed the dues at the time of purchase.

(vi) However, the impugned order was passed by the third respondent directing the petitioner to pay the said sum of Rs.51,11,144/- together with interest at 12% with a default clause. Challenging the same, the petitioner is before this Court.

4. Two separate counter affidavits were filed by both the third respondent as well as the fourth respondent.

5. In the counter affidavit filed by the third respondent, it has been stated that the writ is not maintainable as the petitioner purposefully omitted to implead the Pondicherry Electricity Department as a party, that the petitioner has not exhausted the effective alternate remedy



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available under the Act before the Consumer Redressal Commission under the Electricity Act and that the memorandum of the District Collector, Puducherry dated 08.5.2014 would reveal that a statement was received from the Financial Controller, Electricity Department, Puducherry for recovery of a sum of Rs.51,11,144/- together with interest towards arrears of current consumption charges by the vendor of the petitioner and it should be ensured that the entire amount of demand was recovered within a reasonable period.

6. In the counter affidavit filed by the third respondent, it has been further stated that the third respondent also received the memorandum from the Sub-Collector (Revenue), South, Villianur dated 13.5.2014 to initiate appropriate action for recovery of the arrears, that pursuant to the inquiry conducted by the Village Administrative Officer, Thirubuvanai, it came to light that the petitioner purchased the schedule of property from his vendor, that the report of the Village Administrative Officer, Thirubuvanai was verified with the encumbrance certificate obtained from the Sub-Registrar, Thirukanur, that necessary demand prior to attachment was issued to the last known address of the defaulter, that since nobody was available, the notice was affixed on a conspicuous part



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of the land proposed to be attached in the presence of a local witness as required under Section 25(2) of the Act and that thereafter, the notice of attachment was issued on 11.8.2014 after following the procedure.

7. In the counter affidavit filed by the third respondent, it has also been stated that challenging the demand notice dated 26.5.2014, the petitioner approached this Court by filing W.P.No.29600 of 2014 and obtained a conditional stay order on 13.1.2015. Further, the said writ petition was disposed of on 13.12.2021 with a direction to the petitioner to file his objections before the third respondent. An inquiry was also conducted, in which, the representative of the petitioner also appeared and ultimately, the impugned order came to be passed. According to the third respondent, as per the conditions of sale, the petitioner should pay the due to the Government of Puducherry and recover the same from his vendor with a default clause to sue the vendor. Ultimately, the third respondent sought for dismissal of the writ petition.

8. The fourth respondent filed a counter affidavit wherein it has been stated that the petitioner was one of the directors of his vendor sometime immediately after its incorporation, that for energization of the



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industry, the petitioner along with another signed the power supply agreement on behalf of his vendor, that however, the power supply was disconnected on 11.8.2000 even before the expiry of the agreement for non payment of current consumption charges, that the power connection was never restored thereafter and that since the vendor of the petitioner had not cleared the arrears of current consumption charges, the matter was pursued with the District Collector, Puducherry for recovery under the Act during 2003, 2005, 2007 and 2013.

9. In the counter filed by the fourth respondent, it has been further stated that the vendor of the petitioner addressed to the Secretary to Government (Power), Government of Puducherry acknowledging non payment of dues from the months of June, July and August 2000 amounting to Rs.35,88,980/-, that the petitioner, in his capacity as the director of his vendor, represented the company and furnished an undertaking for extension of the period of agreement from December 1997 to October 1998, that the petitioner portrayed as if he came into contact with the schedule of property only through the sale deed for the first time in 2012, that the petitioner was associated with his vendor in the capacity of a director even before the purchase of the schedule of



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property and that as a part of his vendor, he cannot feign ignorance and is liable to pay the dues of his vendor. Ultimately, the fourth respondent sought for dismissal of the writ petition.

10. The petitioner filed a rejoinder to the counter filed by the fourth respondent wherein it has been stated that though it was true that he was a director of his vendor in 1990s, he resigned the post two decades ago and had no role to play, that the annual return filed for the vendor for the financial year ended on 31.3.2011 would reveal that he was not a director of his vendor at all times, that though the fourth respondent appeared to rely upon Regulation 6.9(2) of the Joint Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2010 justifying initiation of proceedings under the Act, the said Regulations, which were issued under various Sections of the Electricity Act, came into force only on 20.5.2010, that they cannot have any retrospective effect to the old dues, that there is no provision either under the said Regulations or under the Electricity Act that the electricity dues would constitute a charge on the immovable property, that as per Section 56(2) of the Electricity Act, no sum due from any customer shall be recoverable after a period of two years and that even assuming



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without admitting that the respondents are entitled to take action under the Act on the basis of the said Regulations, recovery would be barred under Section 56(2) of the Electricity Act.

11. The learned Senior Counsel appearing on behalf of the petitioner submitted that the impugned order has been passed directing the petitioner to pay a sum of Rs.51,11,144/-. Out of the same, a sum of Rs.15 lakhs was already paid as a condition precedent while granting an order of interim stay in the earlier writ petition and the balance amount due is Rs.36,11,144/-. However, he, on instructions, further submitted that the petitioner is ready to pay the said balance amount to the third respondent by way of demand draft and that the same may be appropriated in favour of the Puducherry Electricity Board.

12. The learned Additional Government Pleader appearing for the respondents submitted that if the entire due is paid, the revenue recovery proceedings will be closed as against the petitioner.

13. The said submissions of both the learned counsel on either side are placed on record.



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WEB COPY 14. In the result, the writ petition is allowed and the impugned adjudication is set aside on condition that the petitioner shall furnish to the third respondent a demand draft to the tune of Rs.36,11,144/- within a period of one (1) week from the date of receipt of a copy of this order. Upon receipt of the demand draft for the said sum, the third respondent is directed to forward the same to the Puducherry Electricity Board, which is, in turn, directed to close the file as against the petitioner after realization of the said sum. No costs. Consequently, the connected writ miscellaneous petitions are closed.

21.08.2024

Index : Yes (or) No
Speaking order / Non-speaking order
Neutral Citation Case : Yes (or) No
sp

To

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Puducherry.

2.The District Collector,
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Pettaiyanchathiram,
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M.DHANDAPANI,J

sp

3.The Tahsildar,
Villianur Taluk,
Villianur, Puducherry.

4.The Superintending Engineer-I,
Department of Electricity,
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