



W.P.No.13745 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2025

WEB COPY

CORAM:

THE HONOURABLE MR. JUSTICE **D.BHARATHA CHAKRAVARTHY**

W.P.No.13745 of 2025

and

W.M.P.Nos.15435 & 15436 of 2025

M/S. A.R. METALLURGICALS PVT LTD.,
HTSC NO.155,
MALLAGAM AKOTHA PALLY VILLAGE,
SHOOLGIRI, DHARMAPURI,
REP. BY ITS
DR. PARVEEZ RAHIM KHAN

... Petitioner

Vs

1. THE SUPERINTENDING ENGINEER,
KRISHNAGIRI ELECTRICITY DISTRICT CIRCLE,
NO.110, K.V.S.S. CAMPUS,
RAYAKOTTAI ROAD,
KRISHNAGIRI - 635 002.

2. THE SUB - REGISTRAR,
SHOOLAGIRI,
KRISHNAGIRI - 635 117 .

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorarified Mandamus, calling for the records of the First Respondent in L.No.SE/KEDC/KGI/DFC/AO/AAO/HT/AS/F.H.T.SC. 155D.No.532/ 2023 dated 22.09.2023 quash the same and consequently direct the second respondent to delete the petitioner property in survey No.311/1B of 1.5650 hectare i.e. 3.87 acres in Nallagankothapalli village from the encumbrance certificate.



WEB COPY



W.P.No.13745 of 2025

For Petitioner : Mr.Krishnamoorthy
assisted by Mr.A.S.Balaji

For R1 : Mr.K.Madhusudanan (TANGEDCO)

For R2 : Mr.R.Sasikumar
Government Advocate

ORDER

This writ petition is filed challenging the order dated 22.09.2023 and to quash the same and consequently to direct the second respondent to delete the petitioner's property in Survey No. 311/1B of 1.5650 hectares (i.e., 3.87 acres) in Nallagankothapalli Village from the encumbrance certificate.

2. The learned counsel appearing on behalf of the petitioner submits that, originally, an order was passed on 31.01.1999 assessing a sum towards electricity theft. The petitioner approached this Court by way of W.P.No. 2754 of 1999. This Court considered the issue in detail and passed an order granting liberty to the petitioner to file an appropriate appeal under Sections 153 and 154 of the Electricity Act, 2003. The petitioner has already filed Electricity O.P.No.71 of 2010 before the Principal District and Sessions Court, Dharmapuri at Krishnagiri and the same is pending. As a matter of fact, the respondents also preferred Writ Appeal No. 1845 of 2011 against the said



W.P.No.13745 of 2025

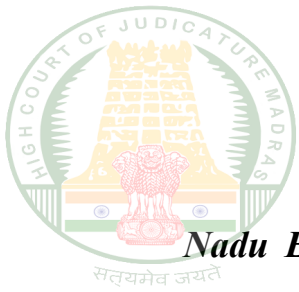
order passed in the writ petition and the same was dismissed by an order dated

13.04.2016. While the matter is still pending and yet to be adjudicated by the concerned District Court, the respondents have suddenly issued the impugned order under the Tamil Nadu Electricity Board (Recovery of Dues) Act, 1978, directing the Sub-Registrar not to permit the sale of the property mentioned above.

3. The learned counsel appearing for the petitioner relies on the judgment of the Hon'ble Division Bench of this Court in Writ Appeal No.646 of 2003. It was categorically held in that judgment, after considering the definition in Section 2(2) for the term dues, that any sum not falling within the meaning of dues cannot be subject to action under the said Act. Paragraph No. 6 of the said judgment is extracted hereunder for ready reference:-

“6. There is no provision anywhere, which says that the debtor includes the transferor. Similarly, there is no provision which says that the amount payable in a bill or any other proceedings becomes a charge on the property or the purchaser from such person is also personally liable. In the absence of any such specific provision, we are unable to accept the contention of the appellant. Hence, this appeal is dismissed. No costs.”

4. The learned counsel appearing for the petitioner relies on the judgment of this Court in ***Shahjahan vs. Superintending Engineer, Tamil***

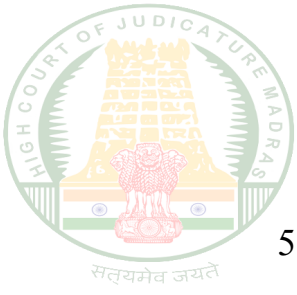


W.P.No.13745 of 2025

Nadu Electricity Board (W.P. No. 3987 of 2004). In that case too, it was

categorically held that there must either be a statutory provision creating such a charge over the property or an express contract. In the absence of a statutory charge, the transfer of property cannot be prohibited by the respondents. The relevant portion of that judgment is extracted hereunder:-

“The petitioner is only the subsequent purchaser in public auction. By such purchase in public auction, the question is whether he will get into the shoes of Mr.Manivel and become the debtor as defined in Section 2(3) of the Act. In my considered opinion, the answer is in an emphatic “no”. The reason is very simple. The amount which is due from Manivel is only a personal liability from him. It has got nothing to do with the property. Absolutely, there is nothing to show that a charge is created on the property in respect of such dues. There is no statutory provision creating such charge over the property. If there is any such charge created either by means of a contract or by means of any statutory provision, then, in that event, if the property is transferred, the charge will also be carried along with the property, it will also be transferred to the transferee of the property. In such event, the transferee will be a debtor and so the amount can be recovered from him. If he fails to pay the amount, it can be recovered from the property because there is a charge over the property. The learned counsel for the respondent is not in a position to show any such contract or statutory provision creating charge over the property in respect of the dues from Mr.Manivel. Therefore, on the date, when the property was sold in public auction to Malathy, it was sold free of any encumbrance, In other words, it was sold without there being any charge over the property.”



W.P.No.13745 of 2025

WEB COPY

5. Therefore, the learned counsel appearing for the petitioner submits that firstly when the liability itself is at large before the concerned District Court. Secondly, even de hors the question of liability, the matter is beyond the jurisdiction of the respondents, as the sum claimed for electricity theft does not fall within the definition of dues under Section 2(2) of the Tamil Nadu Electricity Board (Recovery of Dues) Act, 1978,

6. Per contra, the learned counsel appearing on behalf of the first respondent submits that a huge sum of Rs. 6,95,27,918/- is due in respect of energy theft, and therefore, action has been taken.

7. I have considered the rival submissions made on either side and perused the material records of the case.

8. Firstly, with regard to the question of liability, it can be seen that an original assessment order was passed on 31.01.1999. When the petitioner earlier approached this Court by W.P. No. 2754 of 1999, the same was disposed of with certain directions. It is essential to extract the operative portion of the said order, which reads as follows:



WEB COPY



W.P.No.13745 of 2025

“6. In view of all the above, the writ petition is disposed of with liberty to the petitioner to file an appropriate appeal under Sections 153 and 154 of the Act. If any such appeal is filed, the petitioner is at liberty to raise all the grounds raised in this writ petition. It is made clear that this Court has not expressed any opinion regarding the limitation for such appeal and the same is left open.

7. The respondents are directed not to disconnect the electricity in pursuance of the impugned order for a period of eight weeks from today to enable the petitioner to prefer an appeal before the Special Court. No costs.”

9. Accordingly, a copy of the original petition that is said to be pending before the District Court is filed before this Court. The prayer made in the O.P. is specifically to declare the order dated 31.01.1999 as null and void. The prayer portion is extracted hereunder for ready reference:-

“Therefore it is prayed that this Honourable Court may be pleased

(a) to declare that the impugned order dated 31.01.1999 in the proceedings Lr.No. SED/GEN/F.Doc.A.R.M./TEE 30/98-99/D 1452/99 dt. 31.01.1999 passed by the respondents as null and void and consequently grant an order of permanent injunction not to disconnect electricity to the scheduled premises based on the above impugned order.

(b) directing the respondent to pay the cost of this petition.

(c) Grant such other relief or relief's as this Honourable Court may deem fit and proper.”

10. Therefore, when the petitioner was granted liberty to file an appeal



W.P.No.13745 of 2025

and the petitioner seeks to declare the assessment as null and void, pending the

WEB COPY unless an interim order staying the said order has been granted by the District Court, it cannot be contended that the liability is yet to be fixed. Even now, it is open to the petitioner to approach the same Court for an interim order.

11. As the matter is pending before the District Court and only for the purpose of obtaining an interim order, the jurisdiction of this Court under Article 226 of the Constitution of India cannot be invoked. It is for the petitioner to approach the very same Court by way of an interim order of stay of the recovery or of the assessment order and it is for the concerned Court to consider the request on its merits.

12. As for the second contention that is raised by the learned counsel appearing for the petitioner, I am of the view that there can be no quarrel with the legal proposition that unless there is an express contract or a statutory provision, the respondents cannot proceed to create a charge over the property. In this regard, the definition of dues under Section 2(2) of the Tamil Nadu Electricity Board (Recovery of Dues) Act, 1978, is extracted hereunder:-



WEB COPY



W.P.No.13745 of 2025

“(2) “Dues” means any sum payable to Board on account of-

(i) Consumption of electrical energy supplied; or

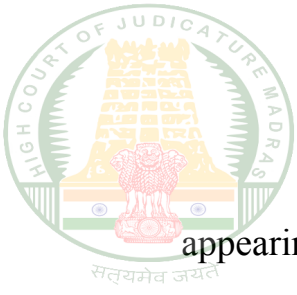
(ii) Any remuneration, rent or other charges for hire inspection, test installation, connection, repairs, maintenance and removal of any electric meter, electric machinery, control gear, fittings, wires or apparatus for lighting, hearing, colling or motive power or for any other purpose for which electricity can or may be used, or any industrial or agricultural machinery operated by electricity: or

(iii) Price of any such goods as aforesaid taken to loan but not returned.”

13. It can be seen that dues will include consumption of electricity supplied. The relevant portion of the assessment order is also extracted hereunder:

“On examination of your explanation to the show cause notice dated 01.10.98 and the record available in the enquiry conducted it is found that you have committed the Theft of Energy by bye-passing the 11KV metering cabicle, by providing 3 Nos. Cable fore shorting of incoming and outgoing jumpers of R, Y and B, Phases, thus preventing the meter from recording of the energy consumed by your industry. By committing the said offence, you have dishonestly abstracted, consumed and used energy with intent to defraud the Board and thereby you have caused loss of revenue to the Board.”

14. Thus, it can be seen that the petitioner had prevented the meter from recording the energy consumed and accordingly, charges were levied. Therefore, in my view, the dues claimed in this case fall within Section 2(1) of the Act and hence, the second contention raised by the learned counsel



W.P.No.13745 of 2025

appearing for the petitioner cannot be sustained.

WEB COPY

15. In view thereof, this writ petition is disposed of, however, with liberty to the petitioner to move the District Court for any interim order, if any, which will be considered by that Court on its own merits. Consequently, connected miscellaneous petitions are closed. No costs.

16.04.2025

Neutral Citation: Yes
nsl

To

1. THE SUPERINTENDING ENGINEER,
KRISHNAGIRI ELECTRICITY DISTRICT CIRCLE,
NO. 110, K.V.S.S. CAMPUS,
RAYAKOTTAI ROAD, KRISHNAGIRI 635 002.
2. THE SUB REGISTRAR,
SHOOLAGIRI,
KRISHNAGIRI - 635 117 .

D.BHARATHA CHAKRAVARTHY, J.



WEB COPY



W.P.No.13745 of 2025

nsi

W.P.No.13745 of 2025

16.04.2025