IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	**28.08.2025**
Pronounced On	**24.11.2025**

Coram:
THE HON'BLE DR.JUSTICE ANITA SUMANTH
and
THE HON'BLE MR.JUSTICE N.SENTHILKUMAR

W.A.Nos.845 & 2584 of 202 3
and C.M.P.Nos.21824 & 8147 of 2023

W.A.No.845 of 2023:

1.Tamil Nadu Generation and Distribution
Company Limited (TANGEDCO),
Represented by its Chairman-cum-
Managing Director,
No.144, Anna Salai,
Chennai – 600 002.

2.Junior Electrical Engineer,
Gobi Electricity Distribution Circle,
West-Bhavani, TNEB,
Urachikottai,
Bhavani – 638 301,
Erode District.

...Appellants

Versus

K.Hariprasad

...Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the Order in W.P.No.311 of 2022 dated 22.06.2022 passed by the learned Single Judge and allow the Writ Appeal.

W.A.No.2584 of 2023:

1.The Chairman,
Tamil Nadu Electricity Board,
Anna Salai, Chennai – 600 002.

2.The Superintending Engineer,
Tamil Nadu Electricity Board,
Chennai Electricity Distribution Circle/West,
Chennai.

3.The Executive Engineer/Operation
and Maintenance,
Tamil Nadu Electricity Board,
Chennai Electricity Distribution Circle/West,
Anna Nagar, Chennai – 600 040.

4.The Assistant Executive
Engineer/Operation and Maintenance,
Tamil Nadu Electricity Board,
Arumbakkam CEDC/West,
Plot No.253, Arumbakkam,
Chennai – 600 106.

...Appellants

Versus

K.Mohan

...Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the Order dated 21.04.2022 made in W.P.No.32116 of 2014 and allow the Writ Appeal.

For Appellants in W.A.No.845 of 2023	: Mr.P.Kumaresan, Additional Advocate General Assisted by Mr.I.Syed Sibghatulla
For Appellants in W.A.No.2584 of 2023	: Mr.P.Kumaresan, Additional Advocate General Assisted by

Ms.Sindhuja
for Mr.L.Jai Venkatesh

For Respondent in W.A.No.845 of 2023 : Mr.Adarsh Subramanian
for Mr.Anirudh Krishnan

For Respondent in W.A.No.2584 of 2023 : Mr.V.C.Janarthanan
for Mr.A.Manoj Kumar

COMMON JUDGMENT

(Judgment of the Court was delivered by **N.SENTHILKUMAR, J.)**

The Writ Appeal No.845 of 2023 is filed against the Order dated 22.06.2022 in W.P.No.311 of 2022 passed by the Writ Court and the Writ Appeal No.2584 of 2023 is filed against the Order dated 21.04.2022 in W.P.No.32116 of 2014 passed by the Writ Court.

Brief facts of the case in W.A.No.845 of 2023:

2. The respondent purchased a vacant land comprised in R.S.No.509/1, measuring an extent of 2.62 Acres, situated at Bhavani

Village, Bhavani Taluk, Erode District from one Mr.N.Sidheswaran by way of Sale Deed dated 03.05.2017 which was registered as Document No.1552 of 2017 on the file of Sub Registrar Office, Bhavani. After purchasing the same, the respondent constructed a building in the said vacant land and he applied for three phase electricity service connection with industrial service tariff III-B supply with a load of 110.5 KW.

3. While so, the 2nd appellant vide Order dated 27.10.2021, directed the respondent to pay a sum of Rs.2,16,01,378/- towards the dues payable by his vendor Sidheswaran since the respondent's vendor had committed theft of electricity while he was in possession of the said vacant land before it was sold to the respondent. Hence, challenging the Order dated 27.10.2021 issued by 2nd appellant, the respondent filed a Writ Petition in W.P.No.311 of 2022.

4. According to the appellants, the respondent was aware that his vendor had committed theft of electricity and the respondent is not a bonafide purchaser and hence, the sale made by Sidheswaran in favour of the respondent will amount to a fraudulent sale. That apart, no proper intimation was given by the said Sidheswaran to the appellants about the conveyance made to the respondent and therefore, Sidheswaran has violated the Regulations 17(4) of the Tamil Nadu Electricity Supply Code.

5. After hearing the learned counsel on both sides, the learned Single Judge held that in view of the law laid down by the Division Bench of this Court in the case of ***Assistant Engineer/O & M Vs. Sabasthi Ammal and Another in Judgment dated 27.01.2015 in W.A.No.719 of 2014,*** the impugned Demand Order dated 27.10.2021 issued by 2nd appellant, calling upon the respondent to pay penalty amount of Rs.2,16,01,378/- for the alleged theft of electricity committed by his vendor is arbitrary and illegal.

The impugned Demand Order dated 27.10.2021 issued by 2nd appellant was quashed and W.P.No.311 of 2022 filed by the respondent was allowed by the learned Single Judge vide Order dated 22.06.2022. Challenging the said order, W.A.No.845 of 2023 has been preferred by the appellants.

Brief facts of the case in W.A.No.2584 of 2023:

6. The respondent is a landlord who let out the premises in favour of one M/s.Centura Plastic Industries under a Lease Agreement on a monthly rent of Rs.2,000/-. The tenant was liable to pay electricity connection charges under the terms and conditions of the Lease Agreement directly to the appellants. On 07.07.2000, while the tenant was in occupation of the respondent's premises, an inspection was conducted by the Anti-Theft Detection Squad of the appellants with regard to tampering of meter box which led to disconnection of service. On 28.07.2000, the meter which was disconnected and removed was reinstalled and the supply of electricity was restored without notice to the respondent landlord.

7. While so, a Show Cause Notice dated 10.08.2000 was issued to the tenant and he appeared for enquiry and filed a writ petition before this Court. Thereafter, an Assessment Order was passed by the appellants, against which, the tenant preferred an Appeal. Challenging the very same Assessment Order, the tenant filed a suit in O.S.No.6604 of 2002 before the XVII Assistant City Civil Court, Chennai. In all these proceedings, the respondent landlord was not a party and no notice was served on him. Ultimately, the suit in O.S.No.6604 of 2002 was dismissed for default on 24.04.2012. After the dismissal of O.S.No.6604 of 2002, the tenant vacated the premises.

8. The 4th appellant issued a Demand Notice dated 18.01.2013, demanding the respondent to pay a sum of Rs.23,06,005/- within a period of 15 days. Thereafter, 4th appellant issued a Notice dated 13.02.2013, calling upon the respondent to pay the amount of Rs.23,06,005/-. On 13.03.2013,

the 4th appellant attempted to disconnect the electricity connection in the respondent's premises. Hence, challenging the Demand Notice dated 18.01.2013 and consequential Notice dated 13.02.2013 issued by 4th appellant, the respondent filed a Writ Petition in W.P.No.32116 of 2014.

9. Before the Writ Court, the respondent/landlord contended that he is not liable to pay the said amount and the Electricity Board shall collect the dues from the person who consumed electricity.

10. Following the dictum laid down by the Gujarat High Court in the case of ***Barot Vitthalbhai Damodardas Vs. Natwarbhai Umedbhai Patel,*** reported in ***CDJ 2009 GHC 003*** that if the property is in occupation of the tenant and the tenant is the beneficiary of the alleged offence, he should alone be held responsible under Section 135 of the Electricity Act 2003, the learned Single Judge held that the impugned Demand Notice dated 18.01.2013 and consequential Notice dated 13.02.2013 issued by 4th

appellant are not legally sustainable. The writ petition filed by the respondent was allowed by the learned Single Judge vide Order dated 21.04.2022. Challenging the said order, W.A.No.2584 of 2023 has been preferred by the appellants.

11. Mr.P.Kumaresan, learned Additional Advocate General appearing on behalf of the appellants in both the writ appeals submitted that the appellant Board is currently governed by the Electricity Act, 2003 and the Tamil Nadu Electricity Distribution Code and Tamil Nadu Electricity Supply Code. Prior to the enactment of said legislations, the appellant Board was governed by various individual acts of which some significant ones were the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 and the Terms and Conditions of Supply of Electricity. He further submitted that the respondents are the consumers of the appellant Board and they are liable to pay the dues towards the appellant Board. He further submitted that under

the Terms and Conditions of Supply of Electricity approved in B.P.Ms.(F.B.) No.61, the term, **"Consumer"** has been defined as follows:

> *"**Consumer** – means any person who is supplied with electrical energy by the Board and includes any person whose installation is for the time being connected for the purpose of receiving electrical energy with the lines/equipment of the Board and also includes an intending consumer or a consumer whose service connection has been disconnected."*

and the term, **"Consumer's Premises"** has been defined as follows:

> *"**Consumer's Premises** – means the area served by a service connection."*

11.1. He further submitted that every consumer enters into an agreement with the appellant Board under certain conditions which binds both the parties until the agreement is terminated. He drew the attention of this court to Sl.No.13 of the Terms and Conditions of Supply of Electricity which reads as follows:

*"**13.Agreements** – All intending consumers shall execute an agreement governing the supply of electricity in the form prescribed by the Board from time to time, at the time of paying the Current Consumption Deposit and the service connection charges. The work of extension of supply will be taken up for execution only after the agreement is executed and the current consumption deposit and the service connection charges are paid.*

***13.10. -** If the consumer, at any time during the currency of the agreement, intends to sell or otherwise dispose of or lease out in whole or in part of the properties or business to which supply is given or has been contracted for, he should give the Engineer of the Board three months' notice of his intention to do so and clear up all dues up to date/disposal/lease."*

11.2. He further submitted that since the respondents are in constructive possession over the premises, they cannot argue that they are not liable to pay the dues left by the tenant and the previous owner of the premises. As per Section 39 of the Indian Electricity Act 1910, any consumer who dishonestly abstracts, consumes or uses energy shall be deemed to have committed theft. For better appreciation, Section 39 of the Indian Electricity Act, 1910 is extracted hereunder:

> *"**39. Theft of Energy. -** Whoever dishonestly abstracts, consumes or uses any energy shall be punishable with imprisonment for a term which may extend to three years, or with fine which shall not be less than one thousand rupees, or with both; and if it is proved that any artificial means not authorised by the licensee exist for the abstraction, consumption or use of energy by the consumer, it shall he presumed, until the contrary is proved, that any abstraction, consumption or use of energy has been dishonestly caused by such consumer."*

Hence, the Act provides for initiation of proceedings against any person found to have committed the act, including the 'Consumer' of the connection. The provision for compounding was inserted by way of amendment in Section 50B, but, the same is applicable only for compounding of the criminal proceedings and not the civil liability to recover extra levy as provided under the Terms and Conditions of Supply of Electricity.

11.3. The learned Additional Advocate General relied upon Sec.70 of Electricity Supply Act, 1948, which reads as follows:

> ***70.Effect of other laws*** *– (2) Save as otherwise provided in this Act, the provisions of this Act shall be in addition to, and not in derogation of, The Indian Electricity Act, 1910 (9 of 1910).*

and submitted that the Act itself has clearly provided that the provisions of this Act are to operate in addition to the above said the Indian Electricity Act, 1910 and not in derogation of it and hence, both the Indian Electricity Act, 1910 and the Electricity (Supply) Act 1948 were operating in parallel to each other and it cannot be said that the latter has repealed the former without there being an express provision to that effect. He further submitted that the terms and conditions of supply of Electricity was enacted to provide procedural mandates for providing electrical supply to the consumers and also the measures of disconnection, reconnection and recovery of dues including the measures of demanding extra levy for theft.

11.4. He further submitted that as per Section 35, these terms and conditions are to be read and construed as being subject in all respects to the provision of Indian Electricity Act 1910, Electricity (Supply) Act 1948, Indian Electricity Rules 1956 and 'Restriction and Control' Orders in force. He further submitted that the respondent(s) were well aware of the act of theft of electricity and the dues attached to the premises. However, they never gave their objection nor challenged the same in lawful means which shows that they are liable to pay the dues. He therefore contended that the respondents are liable to pay the original levy along with Belated Payment Surcharge Due (BPSC). He further submitted that as the Indian Electricity Act 1910, Electricity (Supply) Act 1948 and Indian Electricity Rules 1956 were existing in parallel to each other at the time of deducting a theft in the premises of the respondent in W.A.No.2584 of 2023, the substantive action for theft was taken under Section 39 of the Indian Electricity Act, 1910 and the procedural measures as to the recovery of extra levy for the theft was taken by the appellant Board under the Terms and Conditions of Supply of Electricity.

11.5. He drew attention of this Court to the recovery procedures provided under Schedule – Part – I of the Terms and Conditions of Supply of Electricity, which are as follows:

> ***"1.00 – Introduction – 1.01 – Contravention of any provisions of the Terms and Conditions of Supply of Electricity prescribed by the Board, Indian Electricity Act, 1910***. *The Electricity (Supply) Act 1948, Indian Electricity Rules 1956, Tariff Notification issued by the Government of Tamil Nadu from time to time and any other law governing the supply of electricity or rules framed thereunder shall be treated as violation and the consumer indulging in any violation shall be liable for action as may be prescribed by the Board in this behalf.*

2.00 – Violations and Compensation charges – 2.01 – *Compensation charges for violations shall be payable in addition to any other charges payable by the consumer in respect of the service connection at the rates notified in the Tariff Notification, Terms and Conditions of Supply of Electricity and 'Restriction and Control' orders.*

8.00 – Theft of Energy and Extra Levy – 8.01 – *Any consumer who dishonestly abstracts or uses energy shall be deemed to have committed theft within the meaning of Indian Electricity Act, 1910 as amended by the Tamil Nadu Government and the Indian Penal Code and the existence of artificial means for such abstractions shall be prima facie evidence of such dishonest abstraction. Illegal restoration of supply to a disconnected service connection will fall under this category.*

8.02 – *Extra levy for theft of energy by tampering of meters/meter will be made at the rates given below*

(a) for a period of 12 months

8.03 – *Provides the formula in which the extra levy is to be assessed which is*

*Units consumed = Connected load in KW found at the time of inspection divided by Diversity factor * load factor * number hours per day * duration in days (vide clause 8.02).*

<u>TABLE-A</u>

Category	*Diversity Factor*	*Load Factor*	*Number of hours per day*
Industrial including cottage industries	1.0	80%	As per details in the Table-B below

TABLE-B

	Category	***Number of hours per day***
1	iii. 3 shifts	24

The power of collection of extra levy and disconnection upon detection of theft of energy is provided as follows:

8.05 – The following will be the procedure for collection of the extra levy:-

On detection of theft of energy, the officer authorized as per clause 10 Schedule will issue a notice to the consumer asking him to show cause within seven days from the date of receipt of the notice why extra levy should not be made for having committed theft of energy. This is without prejudice to the other rights of the Board and to the criminal proceedings against the consumer.

If the consumer fails to send his explanation within the stipulated time or if the explanation is not satisfactory, the extra levy will be assessed by the Officer authorized as per sub clause 10 of this Schedule after conducting detailed enquiry by giving reasonable opportunity to the *consumer to represent his case with evidence if any and an order will be sent to the consumer asking him to pay the extra levy in equal monthly instalments.*

The first instalment will be paid within 15 days from the date of receipt of the Assessment Notice by the consumer. Failure to pay any of the instalments within the due date will result in disconnection of supply to the service connection without any further notice.

and contended that the appellant Board has statutory right to enter and inspect the premises of a consumer under the Terms and Conditions of Supply of Electricity. The relevant provision is as follows:

*"**Section 16: Access to Premises, Installations and Requirements – 16.01** – The Board's employees are entitled by statute to enter upon premises to which electricity is supplied at any time for the purpose of inspecting meters and for any other purposes connected with the installations and equipments belonging to the Board or the consumer."*

11.6. Further he referred to the preamble of the Indian Electricity Act, 1910, wherein, it has been stated as follows:

"An Act to amend the law retaining to the supply and use of electrical energy.

Whereas it is expedient to amend the law relating to the supply and use of electrical energy."

and contended that the ambit of the Indian Electricity Act, 1910 is to provide measures for supply of electricity and to regulate its usage. He further contended that the Terms and Conditions of Supply of Electricity provides that the appellant Board is entitled for collecting interest upon the penalty imposed upon a consumer under the following regulation:

> "***Section 21 – Interest for delayed payment in respect of Low Tension Supply – 21.01.*** *Interest payable on any outstanding amount excluding interest component, if any. Interest is payable from the date following the last due date for payment of any bill. No interest will be levied on interest.*
>
> *21.03. In respect of other charges billed separately like compensation charges, penalty, etc. if the charges are not paid within the period specified in the bill, interest will be charges 1.5% per month on the amount to be paid."*

He further contended that the original Indian Electricity Act, 1910 contemplates criminal prosecution for theft of energy. He further contended that as far as W.A.No.845 of 2023 is concerned, the respondent's vendor Sidheswaran was running a coir factory and committed the theft of electricity. The entire village knew about the same and that now, the respondent who had purchased the said property of the said Sidheswaran is also from the same village and he is already a businessman running a spinning mill in the name of Poovarasi Spinning Mills and has LTCT connection and is already paying monthly bills for approximately Rs.5,00,000/- per month and the respondent is well aware about the theft that had taken place in the lands belonged to Sidheswaran. He drew our attention to Regulation 17(9)(a) of the Tamil Nadu Electricity Supply Code which reads as follows:

> *"In case of service connections in a premises, which have been disconnected/dismantled for defaults in payment of dues whatsoever and if such service connections are to be reconnected or new service connections are to be obtained by other persons in such premises either by purchase or transfer or lease basis, the Distribution Licensee shall*

reconnect such service connections or effect new service connections, as the case may be, in such premises only after payment of dues attributed to such premises by the applicant.”

He further contended that the respondent in W.A.No.845 of 2023, without disclosing the fact that his vendor Sidheswaran had committed the theft of electricity, had applied for an industrial service tariff III-B supply with a load of 110.5 KW.

11.7. So far as W.A.No.2584 of 2023 is concerned, he further contended that the respondent being the consumer is bound by the agreement entered between the consumer and the appellant Board to pay all the dues towards the electricity service connection which stands in his name. The respondent being the owner of premises as well as the consumer of the electricity service connection has only authorized the tenant to use the service connection and therefore, for any default or misuse of the service connection, the consumer is bound to meet out the consequences, since he has only authorized another person to use the electricity service connection which is in his name. Therefore, it is for the respondent/consumer to make good the losses incurred by the appellant Board towards the service connection and later recover the same from the tenant who was authorized by the consumer.

11.8. He further submitted that the respondent in W.A.No.2584 of 2023 being the consumer of the service connection has not intimated to the appellant Board prior giving an authorization to his tenant to use the service connection in his name, which is in violation of the Regulation 17(3) of the Tamil Nadu Electricity Supply Code. It is also submitted that the appellant Board can recover the dues from the respondent/consumer as per Regulation 17(4) of the Tamil Nadu Electricity Supply Code. He further contended that the findings given by the learned Single Judge is contrary to the facts and law and therefore, pleaded that the impugned order passed by the learned Single Judge may be set aside.

12. *Per Contra,* Mr.V.C.Janarthanan, learned counsel appearing for the respondent in W.A.No.2584 of 2023 submitted that demand notices were issued in the name of tenant and not in the name of respondent/landlord. Further, the tenant had participated in the enquiry proceedings and had preferred Appeal and instituted a suit against the appellant Board. This itself clearly shows that the liability was fastened on the tenant who had enjoyed the service connection and not on the respondent/landlord. He further submitted a detailed Representation with regard to the title of electricity service connection and the respondent/landlord is not liable to pay any dues to the appellant Board. It is submitted that no notice was issued in the name of respondent/landlord.

While so, the appellant Board cannot contend that the respondent/landlord is liable to pay dues to the appellant Board. The learned counsel further made the following submissions on the issues that arose for consideration in the present Appeal:

1. If it is only a civil liability based on charges incurred then based on the agreement entered between parties liability can be decided, but in this case it cannot be.
2. It has to be held that if tenant commits a default then land lord cannot be mulcted with those charges because the act was a dishonest act by another person namely the tenant.
3. There cannot be a joint liability in case of dishonest abstraction of energy as neither *mens rea* nor can *actus rea* can be attributed to the landlord. Therefore the FIR cannot be sustained.
4. As the tenant agreed to pay initially and later absconded, the landlord cannot be asked to pay as there was no criminal conduct or joint theft or abstraction by both tenant and landlord.
5. Compounding of offence does not arise because such a step cannot be deemed to have been taken by the department or tenant because the amendment act regarding compounding of offence to 1910 Act was

introduced only in Act 39 of 1980 by inserting section 49 A, 50 and 50 B and no measures saying compounding process was initiated by the appellant and any such measures taken by the appellant is not reflected in the assessment order. Initial process based on the working sheet cannot be deemed to have been akin to compounding of offence.

6. No person can be held to be liable for the criminal act of another and no person should be asked to pay a penalty greater than which he ought to have paid if the Law at that time did not hold so. This will clearly violate Article 20 of the Constitution. Further joint liability as dealt in section 34 of IPC is not satisfied and unless a person is hand in glove with another, one cannot be made to answer for the acts of another. Vicarious liability is not known to criminal law. More so, when there is a FIR which has not been acted upon for 25 years, criminal liability cannot be fastened upon the Respondent. If for criminal acts of the tenant, the landlord is asked to pay, then the department is enjoying the "fruits of a poisonous tree" which the court of Law cannot permit.

7. While assessment order was issued under 1910 Act and a FIR was also registered, later the department has relied on a piece of subordinate legislation namely the Regulations issued under the 1948 Act to

recover the dues. For doing so they have further attempted to rely on the Revenue recovery Act also. This action is clearly impermissible because 1910 Act or 1948 Act did not have a specific provision for attaching criminal liability on another person such as the landlord respondent herein similar to that of some statutes namely section 141 of the N.I. Act or section 141 of the New Electricity Act of 2003. Therefore, for proceedings under the earlier Act, the later Act cannot be relied on. Further under 1910 Act or 1948 Act, there is no division of liability as civil liability or criminal liability as under section 126 or section 135 of the Electricity Act 2003. Hence a parallel mechanism to proceed does not exist. Therefore, because the dues in this case arise out of the criminal liability, it cannot be proceeded under 1948 Act through a subordinate legislation as it will violate Articles 14, 19, 21 and 300-A.

8. Most importantly both the 1910 and 1948 Acts are repealed by the 2003 Act and as of today the right already vested under section 6 of the General clauses Act cannot be denied to the respondent. The proceedings initiated under the 1910 Act even if continued and seeks help of 1948 Act through its Regulations, then there has to be a provision like a repeal and savings for it to be alive. But both the acts

are now repealed by the 2003 Act. Therefore, these proceedings cannot stand.

9. When 1910 Act does not create a charge on the property and 1948 Act also does not do so, just by relying on the Regulations framed under 1948 Act which is only a subordinate piece of legislation, the department cannot proceed through the Revenue Recovery Act unless there is a legal provision creating a charge on the property, if not, it will lead to violation of Article 300-A.

13. Further, the learned counsel appearing for the respondent in W.A.No.845 of 2023 submitted that a *bona fide* purchaser having no contractual relationship with the Board, cannot be saddled with the burden of past arrears and is entitled to a fresh connection without being compelled to discharge the liabilities of the erstwhile consumer. Further, he made the following submissions on the issues that arose for consideration in the present Appeal:

1. The amount sought to be recovered from the Respondent herein as a pre-requisite for granting electricity connection is not on account of arrears of electricity dues or charges that have remained unpaid by the previous owner of the premises, but extra levy made for commission of theft of energy by the erstwhile owner.

2. The various charges that may be recovered from a licensee is set out in Regulations 4, 5 & 6 of the TNESC. None of these regulations deal with theft of electricity. Pertinently, Regulations 17(4) and 17(9), i.e., the regulations under which the demand has been made to the Respondent in the 2nd Appellant's order dated 27.10.2021, the words "charges for consumption and other charges due" and "payment of dues" are used respectively. From a conjoint reading of Regulations 4, 5 & 6 and Regulations 17(4) and 17(9), it is amply clear that it is only those charges set out in the former may be recovered under the latter.

3. It is evident from the order dated 27.10.2021 passed by the 2nd Appellant herein that the same are sums accrued on account of theft of electricity committed by the previous owner of the premises. Pertinently, the Respondent has neither committed the theft nor has benefited from such theft.

4. Section 135 of the Electricity Act, 2003 and Chapter 4 (Regulation 23) of the TNESC deal with situations in relation to theft of electricity. Neither of these provide for recovery of sums on account of theft of electricity from the subsequent purchaser of the premises. It is therefore unreasonable and unlawful to seek recovery of the same from the subsequent purchaser for the theft committed by the previous owner, as in the present case.

5. Although substantial reliance has been placed by the Appellants on the judgment of the Hon'ble Supreme Court in *K.C Ninan v. Kerala State Electricity Board and Others*, Civil Appeal No. 2109, 2110 of 2004 dated 19.05.2023, the same may not be of assistance, given the facts of the present writ appeal, as it only speaks of the "dues" and "arrears" and does not deal with the mechanism provided in the event of occurrence of theft of electricity.

14. Heard the learned counsel on either side and perused the materials available on record.

15. So far as W.A.No.2584 of 2023 is concerned, when the appellant Board has conducted a surprise inspection on the premises of the respondent, notice was issued as against the tenant and no notice was issued as against the landlord (respondent in W.A.No.2584 of 2023). It is not in dispute that the appellant Board was not certain about as against whom the charge has to be leveled.

16. Further, the proceedings of the appellant Board categorically establishes that the appellant Board had initially issued notice to the tenant and thereafter, leveled the charges against the landlord.

17. It is clear that there were no proceedings conducted by the appellant Board as against the respondent/landlord, except the notice calling upon the respondent/landlord to deposit/pay the charges along with interest. A reference was made that a criminal case in Crime No.**903 of 200** on the file of Maduravoyal Police Station, Chennai is pending against the respondent/landlord. It is to be noted that the same has to be dealt with before the Criminal Court. Assuming for a moment that the case of theft of energy is made out under Section 320 of Cr.P.C, the criminal proceedings for theft of energy is different from the action of calling upon the respondent/landlord to deposit/pay the charges along with interest.

18. According to the appellant, the respondent in W.A.No.2584 of 2023, who is the landlord of the premises is liable to pay the extra levy payable by the tenant for theft of electricity for the reason that under Section 39 of Indian Electricity Act, 1910, theft of energy is punishable and the same

can be invoked as the Electricity Supply Act, 1948 which was a subsequent enactment, was operating in parallel to the Indian Electricity Act, 1910 at the time of detection of theft in the premises of the Respondent and there is no provision for theft under the 1948 Act. The terms and conditions of supply of Electricity provides for payment of compensation charges or extra levy for various violations and theft of energy.

19. The argument of the appellant is that the service connections are existing in the name of the respondent and therefore, the respondent is a consumer under Regulation 2 of the terms and conditions of supply of electricity. As a consumer, the respondent is liable to pay the dues accrued in respect of the said service connections.

20. This Court is unable to accept the argument of the appellant that

till the agreement is terminated, the said consumer is bound by the agreement with the Board, therefore even though the tenant was in occupation of the premises when the theft was deducted, the respondent who is the landlord is liable to pay the charges.

21. Insofar as W.A.No.845 of 2023 is concerned, the main contention of the appellant is that in order to obtain a fresh electricity connection, the respondent has to clear the outstanding dues of the erstwhile owner under Regulation 17(9)(a) of the Tamil Nadu Electricity Supply Code . In support of the above contention the appellant has relied upon the judgment of ***K.C.Ninan Vs. Kerala State Electricity Board & Ors.*** reported in ***2023 SCC Online SC 663***, wherein in was held as follows:

> *"74.We are of the opinion that the reasoning of this Court in India Thermal Power Ltd. (supra) actually supports the arguments of the Electric Utilities. As evinced from Hyderabad Vanaspathi (supra), the conditions of supply enacted by the Boards have a statutory character. Therefore, any condition enacted under Section 49 of the 1948 Act,*

specifically one requiring the new owner to clear the arrears of the previous owner as a precondition to availing electricity supply, will have a statutory character. When such a condition is incorporated as part of a contract, such contract also attains a statutory character and the liability contained therein becomes a statutory liability, which can be enforced by the utilities against third parties, including the new owners of the premises in question.

...

328....

d.A condition to supply enacted under Section 49 of the 1948 Act requiring the new owner of the premises to clear the electricity arrears of the previous owner as a precondition to availing electricity supply will have a statutory character;

e.The scope of the regulatory powers of the State Commission under Section 50 of the 2003 Act is wide enough to stipulate conditions for recovery of electricity arrears of previous owners from new or subsequent owners;"

22. In the case of ***Isha Marbles Vs. Bihar State Electricity Board and Anr.*** reported in ***(1995) 2 SCC 648,*** which has been relied upon by the

learned counsel for the Respondent in both the writ appeals, the question which arose for consideration before the Hon'ble Supreme Court was whether the auction purchaser is liable to pay the electricity dues of the erstwhile owner of the premises which is purchased by him in the auction sale. The observations of the Hon'ble Supreme Court are as follows:

> *"56.From the above it is clear that 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 the 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.*
>
> ...
>
> *61.What we have discussed above appears to be the law gatherable from the various provisions which we have detailed out above. It is impossible to impose on the purchasers a liability which was not incurred by them.*
>
> ...

63.We are clearly of the opinion that there is great reason and justice in holding as above. Electricity is public property. Law, in its majesty, benignly protects public property and behoves everyone to respect public property. Hence, the courts must be zealous in this regard. But, the law, as it stands, is inadequate to enforce the liability of the previous contracting party against the auction-purchaser who is a third party and is in no way connected with the previous owner/occupier.

23. In the case of ***Dakshin Haryana Bijli Vitran Nigam Ltd., Vs. Paramount Polymers (P) Ltd.,*** reported in ***(2006) 13 SCC 101***, a similar issue was dealt by the Hon'ble Supreme Court and the matter was remitted to the High Court to consider whether the clause which bars the grant of fresh service connection, unless the new owner/occupier clears the earlier electricity dues of the previous owner/occupier of that premises is valid.

24. In the case of ***Paschimanchal Vidyut Vitran Nigam Limited and others Vs. DVS Steels and Alloys private limited and others***, reported in

(2009) 1 SCC 210, it was held as follows:

> *"**11.** The supply of electricity by a distributor to a consumer is "sale of goods". The distributor as the supplier, and the owner/occupier of a premises with whom it enters into a contract for supply of electricity are the parties to the contract. A transferee of the premises or a subsequent occupant of a premises with whom the supplier has no privity of contract cannot obviously be asked to pay the dues of his predecessor-in-title or possession, as the amount payable towards supply of electricity does not constitute a "charge" on the premises. A purchaser of a premises, cannot be foisted with the electricity dues of any previous occupant, merely because he happens to be the current owner of the premises. The supplier can therefore neither file a suit nor initiate revenue recovery proceedings against a purchaser of a premises for the outstanding electricity dues of the vendor of the premises in the absence of any contract to the contrary."*

25. The Hon'ble Supreme Court in the case of ***Telangana State Southern Power Distribution Company Limited and Another Vs. Srigdhaa Beverages*** reported in ***(2020)6 SCC 404*** and a Division Bench of this Court in **W.A.No.3292 of 2023** dated 16.12.2023, held that the auction purchaser is

liable to pay the outstanding electricity dues of the previous owner in order to obtain a new connection, if the property is purchased in “as is where is ” condition. There are numerous judgments on the same line and on the proposition that a subsequent purchaser is liable to pay the lawful dues of the previous owner in order to obtain continuance of electric supply or a fresh connection to the same premises. However, in both the appeals, the appellant has demanded the respondents to clear the charges/extra levy payable by the previous owner of the premises and the tenant of the respondents for theft of electricity. The liability of the third parties to pay the compensation and extra levy towards theft of electricity cannot be shifted on the respondents unless they are involved in the theft of energy or has benefited from the same. Therefore, the demand made by the appellant cannot be sustained.

26. The learned Single Judge of this Court in the case of *S.Kavitha Vs.*

The Chairman, TANGEDCO, Tamil Nadu Electricity Board and Ors., in W.P.No.11580 of 2021, while dealing with the very same question of liability to pay penalty in case of theft of electricity, relied upon the decision of a Division Bench of this Court, in W.A.No.719 of 2014 (cited supra), wherein it has been held as follows:

> *"18.Therefore, in the present case, the fact of the matter is that the First Respondent/writ Petitioner by means of an order dated 31.12.2005 was allotted a shed bearing No.915, 28th street, B.V.Colony, Vyasarpadi, Chennai-39 and she is engaged in a small trade of packing salt in small polythene bags and sell the same in retail. Moreover, electricity supply is necessary for her small business and as such, the impugned order dated 17.03.2011 passed by the Appellant/First Respondent recovering the First Respondent/writ Petitioner to pay the sum of Rs.15,53,975/- together with interest to the Tamil Nadu Electricity Board and only when she is willing to pay the aforesaid amount, the new service connection in her name would be considered is not legally a tenable one in the eye of law because of the simple reason for theft of energy or*

for the benefit enjoyed by a person in regard to the theft of electricity only that particular person can be considered to be an accused person and against whom the Appellant/First Respondent/TNEB can proceed in the manner known to law and in accordance with law. But the First Respondent/writ Petitioner by no stretch of imagination be called upon to pay a sum of Rs.15,53,975/- with interest to the Tamil Nadu Electricity Board and putting a precondition in regard to the above said payment by the Appellant/Tamil Nadu Electricity Board is not correct and legally valid one in the eye of law based on the reason that the First Respondent/writ Petitioner had not committed theft of electricity or energy or even benefited by the theft of electricity which was detected on 19.04.2001 and in fact, the previous tenant Sengalammal was alone responsible for the same in regard to her electricity connections A/c.67-17-584. Also that, the First Respondent/writ Petitioner who is not at all connected with the previous tenant of the Second respondent/Tamil Nadu Slum Clearance Board in the considered opinion of this Court cannot be imposed with a liability of erstwhile tenant in the absence of any agreement between her and the Electricity supplier, more so when the theft of energy was purportedly detected on 19.04.2001 in A/c.67-17-584, *wherein, the theft of energy detected was used by the erstwhile tenant namely, Sengalammal.*

19. In view of the foregoing reasons, this Court holds that the demand/claim made by the Appellant/First Respondent through its letter No.AE/O&M/V.Va.No.53, dated 17.03.2011, claiming a sum of Rs.15,53,975/- towards theft of energy charges as penalty from the First Respondent/writ Petitioner is clearly unsustainable in the eye of law and to that effect, we concur with the view taken by the Learned Single Judge in the Writ Petition. However, this Court bearing in mind, Clause 17(9)(a) of the Tamil Nadu Electricity Supply Code, 2004, directs the Appellant/First Respondent to issue a fresh demand notice/communication requiring the First Respondent/writ Petitioner to pay the lawful due electricity consumption charges of the previous occupier/tenant, reconnection charges or other ancillary/incidental charges by specifying the time limit as per relevant rule of the Tamil Nadu Electricity Supply Code, 2004, within a period of two weeks from the date of receipt of a copy of this order. Further, upon payment of the said claim amount by the First Respondent/Writ Petitioner, the Appellant/TNEB is directed to reconnect/restore/provide new service *connection as the case may be forthwith."*

From a reading of the above decision, it could be seen that in the case of theft of electricity, the person who has committed the theft of electricity and the person who enjoyed the benefit alone could be held responsible. Moreover, Regulations 17(5) to 17(9) contain the provisions for the recovery of such lawful dues from the consumers. The criminal proceedings under Section 135 of the Act do not find a place anywhere among the above recovery measures mentioned in Regulations 17(5) to 17(9). Hence, to invoke the Regulation 17(4) against the petitioner, some pre-existing lawful charges must have been in existence. But, that is not the state of affairs in the case on hand. A reading of Regulation 17(4) of the Supply Code would show that if the consumer fails to give advance intimation about the transfer/leasing of property to the Electricity Board, he is liable to pay the charges payable by the consumer, containing in Regulation 17(5) to 17(9) of the Supply Code, and not beyond that. But, the Compounding fee and Penalty under Section 135 of the Act, do not come under the ambit of Regulation 17(4). Therefore, I am not inclined to accept the submission made by the learned Standing Counsel for the Electricity Board that since the petitioner failed to give advance intimation about the transfer/leasing out of the property, he alone is liable to pay the charges; and the said submission of the learned Standing Counsel has no legal force.

6.It is clear from the above that insofar as the payment of penalty towards current consumption by theft of energy, the same can only be imposed against the occupier of the property who committed such theft of energy and the liability cannot be shifted to any other person. The compounding fee or the penalty as the case may be is collected more by way of a punishment against the offender who committed theft of energy. It is trite law that insofar as commission of offences are concerned, the consequences of the same can never be shifted to any other person from the offender. The concept of vicarious liability is unknown to criminal law since the commission of a crime involves mens rea and the same can be attributed only to the person who commits the crime and it cannot be shifted to anyone else. Therefore, this Court is in complete agreement with the reasoning of the learned Judge in the above judgment.

7.Insofar as Regulation 17(4) of the Supply Code is concerned, the learned Judge has again categorically held that the same will not apply in cases falling under theft of energy. The reason assigned by the learned Judge to the effect that this Regulation will apply only in case of recovery of lawful dues from the consumer, makes all the difference when it comes to the same recovery being attempted to be made by way of penalty in cases of theft of energy. The recovery from the subsequent consumer with regard to the pre-existing charges will only confine itself to the lawful charges and it cannot be extended to penalty that is imposed for theft of *energy.*

8.In the considered view of this Court, the above judgment will squarely apply to the facts of the present case and hence the demand made by the 2nd respondent through the impugned proceedings dated 20.04.2021, is unsustainable in law. It goes without saying that this amount is recoverable from the person who committed the theft and it is always left open to the respondents to proceed against the offender."

27. As per the dictum laid down by the Hon'ble Supreme Court, non-payment of dues by the previous owner/occupier does not constitute a charge over the premises and the subsequent owner can be called upon to clear the lawful dues outstanding in respect of a service connection given to a premises. However, none of the legal provisions relied upon by the appellant Board provides for collection of compensation/extra levy from a subsequent owner or a landlord for the theft of electricity committed /alleged to have

committed by the erstwhile owner or a tenant of the premises. In regulation 17(9)(a) of the Tamil Nadu Electricity Supply Code, the word “dues” is used. As per the said provision, a new service connection can be obtained by a person applying for new connection only after payment of dues attributed to such premises. In this context, dues means lawful dues payable in respect of a premises as held by the Hon'ble Supreme Court in catena of cases. Relying upon the aforesaid provision, the appellants have raised an unreasonable demand as against the respondents by directing them to pay the compensation amount, imposed for the theft of electricity by another person.

28. The subsequent owner is not liable to pay the charges imposed against the previous owner for theft of electricity in order to obtain a fresh service connection. In view of the above, there are no valid grounds to interfere with the orders challenged in both the Appeals.

29. For the foregoing reasons, both the Writ Appeals are dismissed and the Order dated 22.06.2022 in W.P.No.311 of 2022 as well as Order dated 21.04.2022 in W.P.No.32116 of 2014 passed by the learned Single Judge are confirmed. No costs. Consequently, connected Miscellaneous Petitions are closed.

(A.S.M., J.) **(N.S., J.)**
24.11.2025

mrr

Index : Yes

Neutral Citation: Yes

Speaking Order

To

1.Chairman-cum-Managing Director,
Tamil Nadu Generation and Distribution
Company Limited (TANGEDCO),
No.144, Anna Salai,
Chennai – 600 002.

2.Junior Electrical Engineer,
Gobi Electricity Distribution Circle,
West-Bhavani, TNEB,
Urachikottai,
Bhavani – 638 301,
Erode District.

3.The Chairman,
Tamil Nadu Electricity Board,
Anna Salai, Chennai – 600 002.

4.The Superintending Engineer,
Tamil Nadu Electricity Board,
Chennai Electricity Distribution Circle/West,
Chennai.

5.The Executive Engineer/Operation
and Maintenance,
Tamil Nadu Electricity Board,
Chennai Electricity Distribution Circle/West,
Anna Nagar, Chennai – 600 040.

6.The Assistant Executive
Engineer/Operation and Maintenance,
Tamil Nadu Electricity Board,
Arumbakkam CEDC/West,
Plot No.253, Arumbakkam,
Chennai – 600 106.

<u>Dr.ANITA SUMANTH, J.</u>
and
<u>N.SENTHILKUMAR, J.</u>

mrr

Pre-Delivery Common Judgment in
W.A.Nos.845 & 2584 of 2023

24.11.2025