

K.Suguna Vs. Tamil Nadu Electricity Generation and Distribution Corpn.

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Court : Chennai

Decided On : Apr-30-2013

Judge : V.Dhanapalan

Appellant : K.Suguna

Respondent : Tamil Nadu Electricity Generation and Distribution Corpn.

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

30. 04.2013 CORAM: THE HONOURABLE MR. JUSTICE V.DHANAPALAN
W.P.No.1582 of 2013 K.Suguna .. Petitioner Vs.

1. Tamil Nadu Electricity Generation and Distribution Corporation (TANGEDCO)
rep. by its Chief Engineer (Distribution), Coimbatore Region, Coimbatore.

2. The Superintending Engineer, CEDC/South, TNEB, Tatabad, Coimbatore

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3. The Superintending Engineer, Tamil Nadu Electricity Generation and
Distribution Corporation (TANGEDCO) Tirupur, Tirupur District.

4. The Assistant Engineer, Tamil Nadu Electricity Generation and Distribution
Corporation (TANGEDCO), Pongalur Town, Pongalur.

5. The Recovery Officer/ Assistant Provident Fund Commissioner of the Employees' Provident Fund Organisation, Coimbatore. .. Respondents (R5 suomotu impleaded as per order dated 13.02.2013 by VDPJ) Writ petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of mandamus directing the respondents to receive the proportionate amount of Rs.4,02,267/- payable with respect to the land purchased by the petitioner and grant service connection within a time frame. For Petitioner : Mr.I.Abrar Mohammed Abdullah for Mr.R.Subramanian For Respondents : Mr.S.K.Raameshwar, for R1 to R4 Mr.K.Gunasekar, for R5 Senior Central Govt. Standing Counsel O R D E R Heard Mr.I.Abrar Mohammed Abdullah, learned counsel appearing for Mr.R.Subramanian, learned counsel for the petitioner; Mr.S.K.Raameshwar, learned counsel appearing for respondents 1 to 4 and Mr.K.Gunasekar, learned Senior Central Government Standing Counsel appearing for the 5th respondent.

2. This Writ Petition is filed for a direction to the respondents to receive the proportionate amount of Rs.4,02,267/- payable with respect to the land purchased by the petitioner and grant service connection within a time frame.

3. According to the petitioner, she is the owner of a portion of the land measuring an extent of 74 cents situated in S.F.Nos.127/3 and 126/2A1 of Pongalur Village, Palladam Taluk, Tirupur District. She purchased the said lands as per Certificate of Sale of Immovable Property issued by the Recovery Officer, Employees Provident Fund Organisation, Coimbatore for a sum of Rs.35,70,000/-. The said property forms part of the total extent of 6.00 acres of land comprised in S.F.Nos.126/2A1 and 127/3 and the said lands originally belonged to M/s.Venkatram Textiles Pvt. Ltd. The Certificate of Sale of the immovable property has been issued by the Recovery Officer, Employees Fund Organization, Ministry of Labour, Government of India on 18.06.2010 and subsequently registered as Document No.14403 of 2010 on the file of the Sub-Registrar Office, Palladam. 3.1. Pursuant to the said purchase, in order to maintain the said lands and to develop them, the petitioner applied for a temporary Electrical Supply Connection by way of the prescribed application to the 4th respondent herein vide application dated 14.06.2012. In response to the above said application of the petitioner, the 4th

respondent sent a reply stating that originally the service connection with respect to the said lands stood in the name of M/s.Venkatraman Textiles, which has been suspended due to pendency of arrears amount to the tune of Rs.32,92,504/- and that any further application for service connection and its consideration could be made only after the said arrears amount have been cleared. 3.2. It is the case of the petitioner that she purchased 0.74 acres out of 6.00 acres of land which was originally owned by M/s.Venkatraman Textiles and therefore, she is liable to pay the dues only in proportion to the extent of the property purchased by him as per the Notification not TNERC/SC/7-25, dated 18.03.2011 of the Tamil Nadu Electricity Regulatory Commission, making amendments to Clause 17 of the Principal Code, which makes it clear that the dues are to be divided proportionally as per the sub-divided portion and the service connection shall be given after the dues with respect to the said share have been paid. 3.3. The petitioner would state that she is willing to pay his share of the sub-divided portion which comes to the tune of Rs.4,02,267/- in proportion to the total amount of Rs.32,92,504/-. Hence, having no other alternative, the petitioner has come up with the present Writ Petition.

4. In the counter affidavit filed on behalf of the respondents/TANGEDCO, it is stated as follows:

4. 1. The High Tension Service Connection No.37 had been effected in the name of M/s.Venkatram Textiles Pvt. Ltd., to the premises situated in S.F.No.127/3 and 126/2A1 of Pongalur Village, Palladam Taluk of Coimbatore District. The electrical supply had been effected to the premises situated in S.F.Nos.127/3 and 126/2A1 and not to the entire lands stated to be measuring 6.00 acres. 4.2. The said High Tension Consumer M/s.Venkatram Textiles Pvt. Ltd. defaulted in payment of the electricity charges and therefore the supply of service connection No.37 was disconnected as per the terms and conditions of supply of electricity then in force. The current consumption charges from 2/2000 to 10/2000 for Rs.14,50,644/- was outstanding as on the date of termination of agreement. The Company neither came for reconnection nor paid the current consumption arrears since then. In spite of repeated demand notices issued by the respondents, the defaulter M/s.Venkatram Textiles Pvt. Ltd. has not cleared the outstanding dues. Therefore,

action under Tamil Nadu Recovery of Dues (Revenue Recovery) Act, 1978, was proceeded. In accordance with the provisions of the said Act, attachment of the properties owned by the defaulted consumer M/s.Venkatram Textiles Pvt. Ltd. was requested to the Sub-Registrar, Tirupur, by a Letter dated 15.04.2004. Again on understanding the attachment proceedings to be issued by the Recovery Officer, Employees Provident Fund Organization, Coimbatore, letter dated 30.09.2009 was also issued for inclusion of the current consumption arrears against the immovable properties of the defaulted consumer, M/s.Venkatram Textiles Pvt. Ltd. 4.3. As per Regulations 5(4) under chapter 2 of the Tamil Nadu Electricity Supply Code, if any consumer neglects to pay any bill by the due date, she shall be liable to pay belated payment surcharge from the day following the due date for payment. As per Regulation 17(2) of the Supply Code, the consumer is liable to pay the arrears of current consumption charges or any other sum due to the Licensee on the date of disconnection and meter rent, if any, up to the date of termination of agreement and belated payment surcharge upto the date of payment. 4.4. As on the date of termination of agreement, i.e. October 2000, the current consumption arrears stood at Rs.14,50,644/-. The said amount together with the belated payment surcharge as on the date of filing of the above writ petition before this Court works out to Rs.49,24,478/- as below: Current consumption arrears Rs.14,50,644.00 Belated payment surcharge (up to Jan'

13) Rs.33,93,404.00 Dismantling charges Rs. 80,430.00 ----- Total dues outstanding Rs.49,24,478.00 ----- 4.5. The total area of 1.08 landed property with land and buildings of M/s.Venkatram Textiles Pvt. Ltd. had been attached for recovery of arrears by the Recovery Officer, Employees Provident Fund Organization, Coimbatore. Out of the total area of 1.08 acres, the petitioner herein had purchased land and buildings to the extent of 74 cents as per Certificate of Sale of Immoveable property dated 18.06.2010 issued by the Recovery Officer, Employees Provident Fund, Coimbatore. 4.6. The averment of the petitioner that the premises of the High Tension S.C.No.37 consists 6.00 acres of land is false and bereft of truth. The petitioner had presumably averred the above statement as per letter dated 15.04.2004 issued to the Sub-Registrar, Tirupur by the respondents/TANGEDCO, which has been issued requesting encumbrance not only on the premises of High Tension S.C.No.37, but on all the

properties owned by the defaulted consumer, M/s.Venkatram Textiles Pvt. Ltd. and for issuance of Certificate of Encumbrance in case of sale of such properties.

4.7. The petitioner being an intending consumer for electrical supply has to pay the dues attributed to the landed property purchased by her. Only on clearance of the outstanding dues against the disconnected High Tension Service Connection No.37, a new supply could be effected both as per clause 6.10 of terms and conditions of supply of electricity and clause 17 of the Tamil Nadu Electricity Supply (Amendment) Code, 2011. According to these provisions, the proportionate dues attributable to the petitioner herein are as below: Total dues as per supra Rs.49,24,478.00 Total area 1.08 acres Purchased 0.74 acres $(0.74/1.08 \times 100 = 68.52\%)$ Proportion dues Rs.49,24,478 * 68.52% Rs.33,74,252.00 Thus, the petitioner had to clear the proportionate dues of Rs.33,74,252.00 as per the provisions referred to above for effecting a new electrical supply.

4.8. The petitioner has not given any proof of the premises of the High Tension S.C.No.37 comprising 6.00 acres. The extent of 6.00 acres alleged to be the property of S.C.No.37 has to be proved by the petitioner. Without producing the concrete evidence of the above statement, the petitioner is not justified in declaring the proportionate dues at Rs.4,02,267/-. Further, the total dues claimed at Rs.32,92,504/- is outstanding as on 31.01.2006. The petitioner had conveniently evaded further dues on belated payment surcharge upto the date of clearance of arrears. The impugned letter dated 14.06.2012 issued by the 4th respondent clearly states that the arrears amounts to Rs.32,92,504/- approximately and hence, it is not final. The Regulations of the Commissioner's Supply Code could not be violated upon with impunity by the respondents/TANGEDCO. As such, the petitioner's request for extension of electrical supply could be considered only on payment of the proportionate dues of Rs.33,74,252.00.

4.9. The amended clause 17 of the Tamil Nadu Electricity Supply, which came into effect from 18.03.2011 is very categorical that reconnection of disconnected/dismantled service connections or new service connections to the premises in default of payment of dues shall be made only after payment of such dues attributed to such premises by the applicant. The respondents/TANGEDCO are lawfully entitled to collect the proportionate dues of Rs.33,74,252/- of the pending current consumption arrears left unpaid before effecting new electrical supply to the petitioner. On receipt of the

above proportionate dues from the petitioner, the new electrical supply could be effected.

5. The 3rd respondent has filed additional counter affidavit on behalf of respondents/TANGEDCO, stating as follows:

5. 1. On directions from this Court, the 3rd respondent was directed to get necessary records from the Recovery Officer of the Employees Provident Fund Organization and to clarify the position as to what is the extent of land covered by Survey No.127/3 at Pongalur Village, Trichy Main Road, Pongalur Post, to which Service Connection No.37 was given. 5.2. The records from the Recovery Officer of the Employees Provident Fund Organization, Coimbatore have been obtained in letter not TN/RO-CBE/Recovery/21516/2013, dated 04.03.2013. As per the details furnished in the letter of the Recovery Officer of the Employees Fund, Coimbatore, the following extent of lands are covered by Survey No.127/3 of Pongalur Village: S.F.No.127/3 Part I :

0. 11 cents Part II :

0. 62 = cents Part III :

0. 03 cents Total extent of S.F.No.127/3 :

73. 53 cents In the total extent of 73.53 cents in S.F.No.127/3, the petitioner had purchased 62 = cents under Part II of the property. 5.3. As per the records given by the Recovery Officer, Employees Provident Fund, Coimbatore, the extent of property acquired by the petitioner herein is 85% of the total extent of 73.53 cents. As per clause 6.10 of the terms and conditions of supply of Electricity and as per clause 17 of the Tamil Nadu Electricity Supply Code, the petitioner is lawfully liable to pay proportionate 85% of the total dues attributable to the property. 5.4. As per the records given by the Recovery Officer, Employees Provident Fund, Coimbatore, the petitioner is liable to pay the proportionate dues of Rs.41,85,806/- (i.e.49,24,478.00 x 85%) for effecting electrical supply to the property. 5.5. In view of the above, the respondents/TANGEDCO pray for a direction to the petitioner to clear the proportionate dues as per clause 6.10 of the terms and conditions of

supply of Electricity and clause 17 of the Tamil Nadu Electricity Supply Code for effecting electrical supply to the property purchased by her.

6. The 5th respondent has filed counter affidavit and has stated as follows:

6. 1. The attachment of 1.08 Acres in S.F.No.126/2A1 & 127/3 have been done after verifying the photocopies of the following documents in respect of M/s.Venktram Textiles Pvt. Ltd. (a) Registered Sale Deed No.2673/1989 of Sub-Registrar Office, Palladam. (b) Registered Sale Deed No.2674/1989 of Sub-Registrar Office, Palladam. (c) Gift Deed No.1596/1992 of Sub-Registrar Office, Palladam (d) Registered Sale deed No.1779/2005 of Sub-Registrar Office, Palladam. (e) Registered General Power of Attorney Deed No.75/2005 of Sub-Registrar Office, Palladam. 6.2. The details of property transactions of M/s.Venkatram Textiles Pvt. Ltd., are furnished as under:

Purchase Transaction	S.No.	Document No.	Survey No.	Extent	Details of Property
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2674.	1989	127/3	2.17 Acres	Purchased by (Annexure-I)	M/s.Venkatram Textiles Pvt. Ltd.
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2673.	1989	126/2A1	3.20	Acres	-do- (Annexure- II)
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Total		(A)	5.37	Acres	
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Sale/Disposal

1596.	1992	126/2A1	0.106 Acres	Gift to PVKRN HS (Annexure- School III)	
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1779.	2005	(a) 127/3	1.41 Acres	Sold to Smt. (Annexure- IV)	(b) 2.78 Acres 126/2A1
Lakshmiramachandran					

Total				4.296			Acres
Balance	land	(A)	-	(B)	1.074	Acres	available
I	126/2A1	3.20	Acres	Less	(-) 0.106	(vide	Sl.No.3)
	3.094	Acres	Less	(-) 2.780	Acres	(vide	Sl.No.4(b)
Balance		(C)		0.314	Acres	0.314	Acres
II		127/3			2.17		Acres
Less			(-)		1.41		Acres
Balance		(D)		0.76	Acres	0.76	Acres
Total			(C)+(D)		1.074		Acres

6.3. The Office of the 5th respondent has scrutinised Document Nos.2674/1989 and 2673/1989. The total area of the land purchased by M/s.Venkatram Textiles Pvt. Ltd. is 5.37 Acres. After purchase, in the year 1992, M/s.Venkatram Textiles Pvt. Ltd., gifted 0.106 Acres to PVKRN Higher Secondary School vide Gift Deed No.1596 of 1992. Similarly, an extent of 1.41 Acres in Survey No.127/3 and 2.78 Acres in Survey No.126/2A1 has been sold to one Ms.Lakshmi Ramachandran vide Sale Deed No.1799/2005. The total area of land sold to Ms.Lakshmi Ramachandran and gifted to PVKRN Higher Secondary School is 4.296 Acres. The balance land available with M/s.Venkatram Textiles Pvt. Ltd. is 1.074 Acres. Out of the land attached, 0.045 acres have been acquired by National Highways Authority of India and the balance land has been sold to one Suguna and one Praveen as detailed hereunder.

----- S.No.

Name of the Purchaser Survey No. Extent Survey No. Extent Total (in acres) (in

Acres)	-----	1
K.Suguna	127/3 0.63 126/2A1 0.12	0.74
-----		2
N.Praveen	127/3 0.11 126/2A1 0.18	0.29
-----		3 NHAI
127		