

(2015) 04 PAT CK 0011

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 7041 of 2014 and I.A. No. 7007 of 2014

Aparna Housing and Construction Pvt. Ltd.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 03-04-2015

Acts Referred:

Citation : (2015) 04 PAT CK 0011

Hon'ble Judges : Jyoti Saran, J.

Bench : Single Bench

Advocate : Rama Kant Sharma, Senior Advocate and Lakshmi Kant Sharma, for the Appellant; Sanjeet Kumar Singh, AC to AAG, Advocates for the Respondent

Final Decision : Allowed

Judgement

Jyoti Saran, J.—A rejoinder is being filed. Let it kept on record.

2. Although this matter has been listed under the heading "For orders on petitions" but with consent of the parties and since pleadings are complete, the writ petition itself is taken up with a view to its final disposal at this stage itself.

3. The petitioner is the owner of plot Nos. 1119, 1120, 1121 and 1122 having an area of 98 decimals situated at Asiana-Digha Road in the town and district of Patna. The petitioner has constructed two separate blocks known as "Vau's Automobile" and "Vau's Spring". In so far as Vau's Automobile is concerned, a lease agreement was entered in between the petitioner and M/s Etisalta DB Telecom Pvt. Ltd on 31.5.2009 and Clause-11 of the agreement put responsibility of payment of electricity charges on the lessee. It is not in dispute that the lessee defaulted and went in dues and ultimately the line was disconnected on 28.8.2012 and continues to be so. The dues amount is about Rs. 28,39,755/- approximately. It is also not in dispute that the respondent-Distribution Company has taken recourse to the remedies available under the Electricity Act, 2003 (hereinafter referred to "as the Act") and "the Rules" framed thereunder for

realization of amount by resorting to certificate proceedings against the consumer i.e. the lessee of the premises as well as the petitioner and the matter is pending before the appropriate forum. These are facts which are not in dispute.

4. The dispute which arises for consideration in the present case is with regard to the other premises known as "Vau's Spring" and which is also situated within the same plot having a distinct identity. This premises was given on lease to M/s I.C.I.C.I. Foundation for Inclusive Growth under a lease agreement and who made an application for electrical connection which prayer stands rejected by the impugned order dated 6.3.2014 of the Electrical Executive Engineer, Electric Supply Division, New Capital Area, Patna as contained in Annexure-1 inter alia, on grounds of dues pending against the land owner in relation to the other premises namely, Vau's Automobile. It is in these circumstances that the petitioner is before this Court and the applicant namely M/s I.C.I.C.I. Foundation has filed an application for intervention as co-petitioner.

5. I have heard Mr. Rama Kant Sharma, learned senior counsel appearing on behalf of the petitioner as well as the intervenor and Mr. Vinay Kirti Singh, learned counsel appearing for the respondent-Company.

6. The limited issue which arises for consideration before this Court is whether on account of dues outstanding against a separate premises namely "Vau's Automobile" there is any jurisdiction vested in the respondent-Company to deny the petitioner or his lessee, an electrical connection for a separate premises which is known as "Vau's Spring".

7. The respondents do not dispute that both the premises are distinct though situated within the same plot and within the same boundary wall. It is only because the petitioner happens to be the owner of the two buildings and of which the one known as "Vau's Automobile" went in dues and against which a certificate proceeding has been resorted to by the respondent-Company that the denial is forthcoming in respect of the building known as "Vau's Spring".

8. Learned counsel appearing on behalf of the respondents has relied upon Clause 4.15(vi) of the Bihar Electricity Supply Code, 2007 (hereinafter referred to as "the Code") to justify the impugned order.

9. Clause 4.15 (vi) of "the Code" reads as under:

"4.15 - No Dues Certificate.

... ..

... ..

(vi) in case the electricity connection to the said premises was given with the consent of the house owner, such person shall ensure the payment of all arrears/ dues of electricity by the tenant before the tenant vacates the premises."

10. No doubt Clause 4.15 in its sub-clause (vi) puts the onus on the house owner

for clearance of the dues but this provision can be relied upon by the respondent-Company to deny any electricity connection in respect of Vau's Automobile until the dues are cleared and rightly the respondents have taken recourse to the process of certificate proceeding for realization of the dues. There is nothing on record nor it is the stand of the respondents that there are any dues against the premises known as "Vau's Spring".

11. In the circumstances discussed and where there are admittedly no dues pertaining to the premises known as "Vau's Spring" the impugned order rejecting the electricity connection of "Vau's Spring" relying upon Clause 4.15(vi) of "the Code" simply on account of the petitioner being the owner of the two premises and on account of the dues relating to the premises known as "Vau's Automobile", in my opinion is not the correct interpretation of the provisions more particularly where there are admittedly no dues in relation to "Vau's Spring" and the respondents have already taken lawful recourse for realization of dues pertaining to "Vau's Automobile".

12. In the circumstances the order impugned contained in Annexure-1 cannot be upheld and is accordingly set aside. The respondent authorities i.e. the Superintending Electrical Engineer, Electric Supply Division, New Capital Area, Patna (respondent No. 3) and the Executive Electrical Engineer, Electric Supply Division, New Capital Area, PESU, Patna (respondent No. 4) are directed to process the application filed by the lessee of the petitioner namely M/s I.C.I.C.I. Foundation for Inclusive Growth who has filed interlocutory application bearing I.A. No. 7007 of 2014 seeking to intervene in the matter as a co-petitioner and complete the process of providing electric connection within one week from the date of receipt/production of a copy of this order.

13. The writ petition is allowed with the direction aforementioned. The interlocutory application stands disposed of.