

(2011) 08 PAT CK 0002
In the Patna High Court
Case No : CWJC No. 4925 of 2010

Archana Devi

APPELLANT

Vs

The Chairman, B.S. Electricity Board, Bidayut Bhawan, Bailey
Road, Patna and Others

RESPONDENT

Date of Decision : 05-08-2011

Acts Referred:

Citation : (2012) 4 PLJR 701

Hon'ble Judges : Jyoti Saran, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Jyoti Saran, J.—Heard Mr. Rajesh Kumar, learned counsel for the petitioner and Mr. Prakash Kumar, learned counsel for the respondents-Bihar State Electricity Board and its functionaries. The writ petition was filed seeking direction to the respondent-Board to grant domestic electric connection for the premises of the petitioner, for which she had filed an appropriate application in the prescribed form and also deposited the prescribed fee on 14.4.2007 but the same has remained pending.

2. A counter affidavit has been filed on behalf of the respondent-Electricity Board admitting the case of the petitioner as regarding the application being filed on 14.4.2007 together with the application fee of Rs. 30/-, security deposit of Rs. 1,3000/-, service connection charge for Rs. 180/- and meter testing fee for Rs. 50/-. It is next contended that upon examination of the request made by the petitioner it came to knowledge of the respondent-Board that in the year 1965 the ground floor of the premises in question had been rented out to one Babu Hazari Lal by the vendor of the present property. The said tenant after obtaining NDS-II electric connection bearing Consumer No. 3351/29506400 went into arrears of electricity dues and ultimately the electric connection was disconnected on 27.5.2004 for non-payment of the arrear dues of Rs. 22,768/- and finally the meter was removed on 10.5.2006. The said fact is manifest from

Annexure-7.

3. It is the stand of the respondent-Board that although the petitioner purchased the property upon execution of the sale deed by the vendor on 16.1.2006 but the arrears of electricity dues as regarding the ground floor portion of the house continued to remain as such and hence the connection has not been provided to the petitioner.

4. Mr. Prakash Kumar in support of the contention relies upon a judgment of the Hon"ble Supreme Court reported in Paschimanchal Vidyut Vitran Nigam Ltd. and Others Vs. DVS Steels and Alloys Pvt. Ltd. and Others, more particularly to paragraphs 14 and 15 thereof in which the Hon"ble Supreme Court while deliberating on a similar issue have upheld the demand by the Board from the purchaser. He thus submits that it was the duty of the purchaser to have ensured that there was no electricity arrears pending against the premises in question before making purchase of the property and that the petitioner being vendee of the property in question having failed to ensure the same, he is liable to pay the electricity dues pertaining to the property in question.

5. Learned counsel for the petitioner responding to the contentions of the learned counsel for the Board relies upon a judgment of the Hon"ble Supreme Court reported in Haryana State Electricity Board Vs. Hanuman Rice Mills and Others, , and submits that the Hon"ble Supreme Court taking note of its earlier judgment reported in Paschimanchal Vidyut Vitran Nigam Ltd. and Others Vs. DVS Steels and Alloys Pvt. Ltd. and Others, has categorically laid down the circumstances in paragraph 9 of the judgment, under which the purchaser can be saddled with the arrear of electricity dues pertaining to the property.

6. Paragraph 9 of the judgment of the Supreme Court rendered in the case of Haryana State Electricity Board vs. Hanuman Rice Mills, Dhanauri & Ors., runs as follows:--

9. The High Court held that the demand was untenable in view of the decision in Isha Marbles, In Isha Marbles this court held that in the absence of a charge over the property in respect of the previous electricity dues, and in the absence of any statutory rules authorizing a demand for the dues of the previous occupant, an auction purchaser seeking supply of electrical energy by way of a fresh connection, cannot be called upon to clear the pre-sale arrears, as a condition precedent for granting fresh connection. This court further held that an Electricity Board could not seek the enforcement of the contractual liability of the previous owner/occupier against a purchaser, who was a third party in so far as the contract between the Electricity Board and the previous occupant and that an auction purchaser who purchases the property after disconnection of the electricity supply, could not be considered as a "consumer" within the meaning of the Electricity Act, 1910 or Electricity (Supply) Act, 1948, even though he seeks reconnection in respect of the same premises. This court observed: (SCC p. 664, para 63)

63.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. It may not be correct to state, if we hold as we have done above, it would permit dishonest consumers transferring their units from one hand to another, from time to time, infinitum without the payment of the dues to the extent of lakhs and lakhs of rupees and each one of them can easily say that he is not liable for the liability of the predecessor in interest. No doubt, dishonest consumers cannot be allowed to play truant with the public property but inadequacy of the law can hardly be a substitute for overzealousness.

(emphasis supplied)

7. Learned counsel submits that the Hon'ble Supreme Court in no uncertain terms has held that electricity arrears do not constitute a charge over the property and thus unless there is a statutory rule requiring the purchaser to pay the arrear of electricity dues of the predecessor in interest in the property of which he is the purchaser, the charge cannot be saddled on the purchaser.

8. During the course of argument, learned counsel for the Board has produced a copy of the Bihar Electricity Supply Code, 2007 (hereinafter referred to as the "Supply Code"). The third proviso to Clause 4.1 of the Supply Code requires the purchaser of a property applying for a new connection, to clear the dues, in case he happens to be a relative of the person against whom the electricity arrears have been noted. Clause 4.15 of the Supply Code also cast a duty on the vendor to find out the outstanding dues as on the date of sale and also to pay the same.

9. A perusal of the sale deed placed on record at Annexure-1 demonstrates that the vendor has given assurance to the vendee-petitioner herein that there were no arrears dues in relation to the premises in question on the date of execution of the sale deed.

10. In view of the assurance given by the vendor of the property that there was no dues outstanding against the property in question, there appears no reason for the vendee-petitioner to have doubted the statement made by the vendor and to make further enquiry in connection with electricity dues. The clause of the Supply Code further clarifies this position and requires the vendor of the property to ensure outstanding electricity bill as on the date of sale and the vendee has been held responsible only to the extent if he happens to be the relative of the person against whom there are arrears pending.

11. The respondent despite admitting in paragraph 9 of the counter affidavit that there was absolutely no relationship between the defaulter Babu Hazari Lal with the petitioner yet goes on to demand payment of the arrears pertaining to the said Babu Hazari Lal of Rs. 22,768/-.

12. A consideration of the provisions of the Supply Code and the recitals of the sale deed manifests that no responsibility or obligation has been cast on the petitioner to either make any enquiry as regarding pending electricity dues or to clear the same.

13. In that view, there appears absolutely no justifiable reason on the part of the Board to have denied electric connection to the petitioner for a long period of 3 years forcing her to the present unnecessary litigation. For the reason aforesaid, the writ petition is allowed, the respondents are directed to provide the electric connection to the petitioner within a period of 8 weeks from the date of receipt/production of a copy of this order.