

(2010) 09 GUJ CK 0024

In the Gujarat High Court

Case No : Special Civil Application 4449 of 2010

Govindbhai Somnathbhai Suthar

APPELLANT

Vs

Uttar Gujarat Vij Company Ltd.

RESPONDENT

Date of Decision : 28-09-2010

Acts Referred:

State Financial Corporations Act, 1951 — Section 29, 9(3)

Citation : (2011) 2 BC 435

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : R.D. Dave, for the Appellant; Lilu K. Bhaya, for the Respondent

Final Decision : Dismissed

Judgement

H.K. Rathod, J.

1. Heard learned Advocate Mr. R.D. Dave for Petitioner and learned Advocate Ms. Lilu K. Bhaya for Respondent Uttar Gujarat Vij Company Ltd. This petition is filed by Petitioner Govindbhai Somnathbhai Suthar, Proprietor of M/s. GSP Industrial Product challenging decision taken by Respondent Electricity Company Ltd. dated 19th January, 2010 where demand for refund made by Petitioner has been rejected. Looking to prayers made by Petitioner in this petition, prayers made in Paras 9 (A) to (D) are quoted as under:

(A) This Hon"ble Court may be pleased to admit and allow this petition.

(B) This Hon"ble Court may be pleased to issue writ of mandamus and/or any other appropriate writ, order or direction declaring that the impugned decision of the Respondent communicated by the letter dated 19.1.2010 (Annexure-A) is illegal, unjust, improper, arbitrary and unreasonable and further be pleased to direct that the Respondents, its officers, servants and agents to refund and pay to the Petitioner Rs. 1,43,286/- with interest at the rate of 18% per annum from the date of deposit till it is refunded.

(C) Pending hearing and final disposal of this petition, this Hon''ble Court may be pleased to direct Respondent to refund Rs. 1,43,286/- to the Petitioner together with interest at the rate of 18% per annum from the date of deposit till its refund.

(D) This Hon''ble Court may be pleased to grant any other and further reliefs, as the nature and circumstances of the present case may require.

2. This petition is preferred by Petitioner under Articles 14, 19 and 226 of Constitution of India and in the matter of Electricity (Supply) Act, 1948 and Rules framed thereunder. Brief facts of present petition are as under:

3. M/s. Deep Wires Private Limited had borrowed a term loan from Gujarat State Financial Corporation. For availing loan, the factory premises being primary security was offered by creating charge over factory premises, which was situated at C-I-65, GIDC Industrial Estate, Phase-II, Dediyan, Mehsana-384002. According to Petitioner, since M/s. Deep Wires Private Limited committed defaults in repayment of loan to GSFC, action u/s 29 of State Financial Corporations Act was initiated by GSFC against M/s. Deep Wires Pvt. Ltd. and by following procedure u/s 29 of State Financial Corporations Act, primary security of M/s. Deep Wires Pvt. Ltd. was put to auction by inviting tenders. Ultimately, Tender Committee of GSFC accepted offer of Petitioner for Rs. 3,11,111.00 and issued sale letter dated 4.7.1994 in favour of Petitioner. Accordingly, Petitioner made full payment to GSFC towards sale. According to Petitioner, later on, request was made by Petitioner vide letter dated 2.8.1994 to GSFC to permit the change of name and to accept offer in the name of M/s. GSP Industrial Product, instead of personal name of Petitioner, Govindbhai Somnathbhai Suthar which request was accepted by GSFC vide letter dated 30.8.1994. According to Petitioner, thereafter, Petitioner had approached Respondent company for getting electric connection and application was submitted by Petitioner in requisite form together with details with a request to give electric connection immediately since Petitioner has purchased industrial unit from GSFC: However, Respondent refused to give electric supply on the ground that there were dues of erstwhile owner M/s. Deep Wire Private Limited, who was in arrears and unless and until such dues were paid by Petitioner, electric connection cannot be granted. According to Petitioner, on one hand, as Petitioner was in urgency to start factory so as to pay sale price to GSFC who granted instalments, therefore, under coercion, Petitioner paid Rs. 1,43,286.32 to Respondent (erstwhile GE Board) towards arrears of previous, owner M/s. Deep Wires Private Limited. Subsequently, vide letter dated 2nd January, 1995, request was made by Petitioner to Respondent, erstwhile GE Board to give electric connection since entire dues of previous owner have been paid by Petitioner. On receipt of full amount, No Due Certificate was also issued by Respondent dated 9th January, 1995. According to Petitioner, thereafter, vide letter dated 10th October. 1995 addressed by Petitioner to Deputy Executive Engineer of Respondent, request was also made by Petitioner to supply stage-wise details of actual amount, interest and other charges collected from

Petitioner which details were accordingly supplied by Deputy Executive Engineer to Petitioner vide letter dated 19th October, 1995 regarding dues of erstwhile owner. According to Petitioner, being aggrieved by such coercive recovery of dues of previous owner by Respondent erstwhile GE Board for giving connection to Petitioner who has purchased unit and upon knowing from news paper report that the purchaser of unit was not liable to pay the dues of erstwhile owner, when unit was purchased from GSFC, Special Civil Application No. 4698 of 1996 was filed by Petitioner before this Court which was admitted and ultimately came up for final hearing on 28th October, 2009 and it has been observed in said order that the amount was recovered prior to introducing Condition No. 2(j) and, therefore, Petitioner is entitled to refund amount in light of judgment of Apex Court in Isha Marbles Vs. Bihar State Electricity Board and Another, as well as judgment of this Court in Sarvoday Corporation Vs. Gujarat Electricity Board and Another, This Court has also considered submissions made on behalf of Respondent that when dispute/controversy is prior to introduction of Condition 2(j), normally, GEB reconsiders decision. Therefore, this Court directed Respondent (erstwhile GEB) to take into consideration aforesaid judgment of Apex Court and of this Court and to reconsider its decision and to take appropriate decision within four weeks from date of said judgment. It was also observed that in case decision is taken in favour of Petitioner to refund amount, same to be adjusted in subsequent bill. It was also observed that if decision is against Petitioner, it will be open for Petitioner to challenge same. Despite repeated letters and request, decision was not taken within four weeks from date of judgment i.e. 28.10.2009. Thereafter, decision was taken by Respondent on 19th January, 2010 Annexure-A and according to Petitioner, stand taken by Respondent company is totally hostile and whatever payment made was by old consumer to clear dues as per record and GEB has not insisted for payment of dues of earlier owner but in fact, M/s. Deep Wires Private Limited had cleared its dues and hence question of refund of amount to Petitioner does not arise. It is also communicated that there is no question of Condition No. 2(j) and Petitioner has no locus standi for refund. Said order dated 19th January, 2010 has been challenged by Petitioner by way of this petition before this Court.

4. It is necessary and relevant to note and consider order passed by this Court in Special Civil Application No. 4698 of 1996 dated 28th October, 2009. Therefore, said order pages 22 to 25 is quoted as under:

1. The Petitioner, by way of this petition, has prayed for an appropriate writ, direction and order directing the Respondents- Gujarat Electricity Board (at the relevant time) to refund the amount of Rs. 1,43,286.32 to the Petitioner which the Petitioner deposited for the purpose of getting new connection and/or reconnection.

2. It is the contention of the Petitioner that the Petitioner purchased the property in question in an auction held by the Respondent No. 2 and that the Petitioner was not liable to bear the burden of its liability of erstwhile owner in respect of

the arrears to be paid to the Respondent No. 1 GEB. It is also the contention on behalf of the Petitioner that the Petitioner was constrained to deposit the said amount as the Petitioner was not granted reconnection and/or electricity supply. Mr. Sandeep Bhatt, learned Advocate appearing on behalf of the Petitioner has submitted that the controversy in question is covered by the judgment of the Hon''ble Supreme Court in case of Isha Marbles Vs. Bihar State Electricity Board and Another, as well as decision of this Court in case of Sarvoday Corporation Vs. Gujarat Electricity Board and Another, It is also the case on behalf of the Petitioner that it is the case prior to introduction of Condition 2(j) and, therefore, the Petitioner is entitled to refund.

3. Mr. R.C. Jani, learned Advocate appearing on behalf of the Respondent No. 1 - GEB has submitted that in case where the dispute and/or controversy is prior to introduction of Condition 2(j), normally being reconsidered by the G.E.B.

4. At this stage, Mr. Sandeep Bhatt, learned Advocate appearing on behalf of the Petitioner has submitted that the Petitioner has already submitted an application for refund. In view of the aforesaid facts and circumstances of the case and more particularly, the controversy is for the period prior to Condition No. 2(j) and in view of the above submission made by Mr. Jani. the Respondent No. 1 is directed to reconsider its decision in light of the judgment of the Hon''ble Supreme Court of India in case of Isha Marbles Vs. Bihar State Electricity Board and Another, as well as decision of this Court in case of Sarvoday Corporation Vs. Gujarat Electricity Board and Another, and to take an appropriate decision within four weeks from today. In case after their decision, and any amount is to be determined to be refunded to the Petitioner, the same be adjusted in the subsequent bills.

5. With aforesaid observations and direction, the petition stands disposed of accordingly. It is clarified that the amount which is already paid or recovered will be adjusted against the future dues. However, it will be open for the Petitioner to challenge the decision that may be taken if the same is adverse to the Petitioner.

5. Page 19, order passed by Superintending Engineer, UGVCL, Mehsana whereby representation made by Petitioner was rejected by Respondent company is also quoted as under:

In connection to your demand for refund of payment made by Deep Wire Pvt. Ltd. Vide receipt U No. 84228 dated 24.12.1994 M 58829 dated 19.10.1994. M95879 dated 20.10.1994, M95878 dated 20.19.1994 is put up before authority with oral order of Hon''ble High Court in SCA No. 4698/96 dated 28.10.2009. In your case when old consumer had cleared his dues as per record and there is no event in which GEB has insisted for payment to GSF Industrial produce to pay dues of Deep Wire but in fact Deep Wire Pvt. Ltd had cleared his dues, hence, question of refund of dues amount paid by old consumer to new consumer does not arise. Here there is no question of condition 2(j) and you have no locus standi for refund.

6. One letter dated 2nd January, 1995 addressed by Petitioner G.S. Suthar in the capacity of proprietor of GSP Industrial Products to Deputy Executive Engineer, Rural Sub Division, Gujarat Electricity Board, Mehsana being relevant, is quoted as under:

The Dy. Ex. Engineer, 2.1.1995 Rural Sub Division, Gujarat Electricity Board Mehsana 384 001.

Subject: Full & final Settlement of DUES of M/s. Deep Wires Pvt. Ltd. C-165, GIDC Estate, Mehsana.

Dues Amount: Rs. 1,42,08.97 for 3 Phase 20940/000237 Rs. 1,177.35 For S/Phase-20940/00073/3 Rs. 1,43,276.32 as on 29.12.1994 Dear Sir, With reference to above subject here with we are making full and final settlement of the dues of M/s. Deep Wires P. Ltd. As we have taken over the assets of M/s. Deep Wire P. Ltd., in auction from GSFC vide GSFC's order No. GSFC/CR/5222 dated 4.7.1994.

We made the payment of Dues as under:

Rs. 25000/00

Rs. 20000/00

Rs. 117700

Rs. 15030/00

Paid by cheque No. 746993, dated 9.10.1994 of Dena Bank Mehsana.

Paid by cheque No. 746994, dated 20.10.1994 of Dena Bank Mehsana.

Paid by cheque No. 746995, dated 20.10.1994 of Dena Bank Mehsana.

Deposit paid by M/si Deep Wires Pvt. Ltd.

Total amount adjusted on 29.12.1994.

Rs. 143286.00

At our end, we have paid fully all the dues created by M/s. Deep Wires Pvt. Ltd., thus, we are at liberty to request to GEB Mehsana to give us new connection at C-1/65 GIDC Estate II Mehsana

7. In light of these factual aspects, affidavit in reply filed by Deputy Engineer of UGVCL on behalf of Respondent is required to be considered. Therefore, relevant paragraphs 6, 7, 8, 9, 10, 11 and 12 of said affidavit in reply filed on behalf of Respondent company are quoted as under:

6. I say that the petition is not maintainable before this Hon''ble Court looking to the prayer made by the Petitioner in Para 9(B) of the petition for refund of Rs. 1,43,286/- along with interest @ 18% p.a. It is submitted that for such prayer petition under Article 226 of the Constitution is not maintainable. Therefore, on this ground only, the petition is required to be dismissed.

7. I further say that even otherwise as per the Petitioner, cause of action is alleged to have arisen when he has paid the amount in the year 1995. Merely because the Petitioner has approached this Hon''ble Court and the Hon''ble Court has permitted to make representation, the petition cannot be said to be within limitation. Therefore, on this ground also, the petition is required to be dismissed.

8. Respondent submits that admittedly the Petitioner has purchased the aforesaid property in auction from GSFC. Admittedly there were dues in the name of old consumer M/s. Deep Wires Pvt. Ltd. and the receipt has also been issued in the name of M/s. Deep Wires Pvt. Ltd. It is not correct to say that the Respondent has refused to release the connection. I say that the records show that the amount of Rs. 1.43.286.32 was paid in the account of old consumer M/s. Deep Wires Pvt. Ltd. And a receipt is also issued in the name of M/s. Deep Wires Pvt. Ltd.

9. Respondent submits that the Respondent has rightly refused to entertain the representation of the Petitioner and rejected the claim of the Petitioner vide letter dated 19.1.2010. It is clear that as per the record, old consumer has cleared the dues. The Respondent herein (erstwhile Gujarat Electricity Board) has not insisted for payment of dues of old consumer M/s. Deep Wires Pvt. Ltd. from the Petitioner. Therefore, Petitioner has no locus standi to ask for the refund of the said amount. Therefore, the petition deserves to be dismissed on this ground also.

10. Respondent further submits that before the decision of the Hon''ble Supreme Court in the case of Isha Marbles, the erstwhile Gujarat Electricity Board was entitled to recover the dues of the earlier consumer. I say that as on today also, Petitioner's demand for refund is untenable in view of the legal position as on today. Respondent submits that assuming without admitting that as alleged by Petitioner, Petitioner has paid the amount of the dues of the earlier consumer, the Petitioner is not entitled to refund of the same in view of the decision of the Hon''ble Supreme Court reported in Paschimanchal Vidyut Vitran Nigam Ltd. and Others Vs. DVS Steels and Alloys Pvt. Ltd. and Others, in the case of DVS Steels.

11. Petitioner is not entitled to any prayers made in Paras 9(A) to (D).

12. In view of what is submitted hereinabove and what may be submitted at the time of hearing, it is most respectfully prayed that Your Honour be pleased to vacate the ad interim relief granted earlier and dismiss the petition with costs.

8. It is necessary to note that against said reply filed by Respondent company, no rejoinder is filed by Petitioner, therefore, averments made by Respondent in

affidavit in reply have remained unchallenged. According to case of Respondent company, it is not correct to say that Respondent has refused to release connection in favour of Petitioner and Respondent has rightly refused to entertain representation by order dated 19th January, 2010. From aforesaid reply of Respondent, according to Respondent, it is clear that as per record, old consumer had cleared the dues and GE Board has not insisted for payment of dues of old consumer M/s. Deep Wire Pvt. Ltd. from Petitioner. Thus, according to Respondent company, whatever amount has been paid, that was paid by old consumer means M/s. Deep Wire Private Ltd. And accordingly receipt has also been issued by Respondent in the name of M/s. Deep Wires Pvt. Ltd. and there was no communication from Respondent received by Petitioner which would go to suggest that Respondent company has ever demanded amount of dues of erstwhile consumer M/s. Deep Wires Pvt. Ltd. from Petitioner. So, according to Respondent, there was no insistence by Respondent upon Petitioner to pay dues of old consumer but whatever payment has been made by Petitioner, that being ultimately payment to Respondent for having electric connection and for that, Respondent is not liable to refund amount which has been paid against legal dues of old consumer. Respondent has relied upon one decision of Apex Court reported in Paschimanchal Vidyut Vitran Nigam Ltd. and Others Vs. DVS Steels and Alloys Pvt. Ltd. and Others, in case of DCS Steel. As against that, learned Advocate Mr. R.D. Dave for Petitioner has relied upon recent decision of this Court given in Special Civil Application No. 4669 of 2007 with Special Civil Application No. 2160 of 2007 with Special Civil Application No. 17053 of 2007 dated 14.9.2010. In said decision, this Court has considered decision of Apex Court in case of Haryana State Electricity Board Vs. Hanuman Rice Mills and Others, wherein Apex Court has considered case of Isha Marbles v. Bihar State Electricity Board (supra), Dakshin Haryana Bijli Vitran Nigam Ltd. v. Paramount Polymers (P) Ltd. 2006 (13) SCC 101 and Paschi Vidyut Vitran Nigam Ltd. v. Excel Buildcon Pvt. Ltd., 2008(10) SCC 720 and observed as under in Paras 9 and 9.1:

9. At this stage it would be advantageous to refer to a decision of the Apex Court in the case of Haryana State Electricity Board v. Hanuman Rice Mills and Ors. (supra). In the said decision the Apex Court considered the case of Isha Marbles v. Bihar State Electricity Board (supra), Dakshin Haryana Bijli Vitran Nigam Ltd. v. Paramount Polymers (P) Ltd. (supra) and Paschimanchal Vidyut Vitran Nigam Ltd. v. Excel Buildcon Pvt. Ltd. (supra). The Apex Court observed therein as under:

9. The position, therefore can may be summarized thus:

(i) Electricity arrears do not constitute a charge over the property. Therefore in general law, a transferee of a premises cannot be made liable for the dues of the previous owner/occupier.

(ii) Where the statutory rules or terms and conditions of supply which are statutory rules or terms and conditions of supply which are statutory in

character, authorize the supplier of electricity, to demand from the purchaser of a property claiming re-connection or fresh connection of electricity, the arrears due by the previous owner/occupier in regard to supply of electricity to such premises, the supplier can recover the arrears from a purchaser.

Position in this case:

10. The Appellant did not plead in its defence that any statutory rule or terms and conditions of supply, authorized it to demand the dues of previous owner, from the first Respondent. Though the Appellant contended in the written statement that the dues of Durga Rice Mills were transferred to the account of the first Respondent, the Appellant did not specify the statutory provision which enabled it to take such a claim. The decision in Paramount Polymers shows that such an enabling term was introduced in the terms and conditions of electricity supply in Haryana only in the year 2001. The Appellant did not demand the alleged arrears, when first Respondent approached the Appellant for electricity connection in its own name for the same premises and obtained it in the year 1991. More than three years thereafter, a demand was made by the Appellant for the first time on 16.1.1995 alleging that there were electricity dues by the previous owner. In these circumstances the claim relating to the previous owner could not be enforced against the first Respondent.

9.1 Thus, the electricity arrears do not constitute a charge over the property and therefore in general law, a transferee of a premises cannot be made liable for the dues of the previous owner/occupier. 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. In the present case the learned Advocate for the Respondent is not in a position to show any statutory rules or terms that the arrears due in regard to the supply of electricity made to the premises when it was in the occupation of the previous owner/occupant, should be cleared before the electricity supply is restored to the premises or a fresh connection is provided to the premises. In absence of any such term or rule, the claim relating to the previous owner cannot be enforced against the Petitioners.

9. In light of aforesaid facts, pertinent question was asked by this Court to learned Advocate Mr. R.D. Dave for Petitioner that whether Petitioner is having any documentary evidence in support of his contention raised in this petition that request made by Petitioner for having electric connection from Respondent has been refused by Respondent erstwhile GE Board on the ground that unless and until legal dues of old consumer is not cleared, no electric connection will be given to Petitioner, or not and whether the Petitioner is having any documentary evidence to show that the demand made by Petitioner has been rejected by

Respondent in writing while insisting that first Petitioner should make payment of dues of old consumer and then only connection can be given. In answer to aforesaid questions, learned Advocate Mr. R.D. Dave for Petitioner has fairly submitted before this Court that Petitioner has not received any such communication or letter from Respondent erstwhile GE Board insisting for payment of dues of earlier/erstwhile owner from Petitioner but he submitted that orally, it was insisted by Respondent which fact has been disputed by Respondent by specific averment made in affidavit in reply filed by Respondent. Therefore, when Respondent orally insisted for payment of dues of erstwhile consumer for getting connection and when same is specifically denied by Respondent by clarifying that no such demand has ever been made by Respondent from Petitioner for clearance of dues of erstwhile consumer, question is that whether, in light of these facts alleged by one party and disputed by other party, whether Petitioner is entitled for refund of any amount from Respondent or not. Law, which has been discussed and relied upon by both parties is not applicable to facts of present case because law which has been examined by Apex Court as well as this Court is that Respondent company cannot insist for such payment towards dues of erstwhile consumer for giving electric connection to purchaser and Respondent company cannot say that only thereafter, electric connection will be given.

10. In present case, facts are altogether different because Respondent has come forward in this case with clear case that no such demand is made and Respondent has not insisted for such payment towards dues of erstwhile consumer from Petitioner as alleged by Petitioner. Respondent has clearly stated that no demand was made by Respondent from Petitioner about due amount of old consumer and it had never insisted upon Petitioner to first pay due amount of old consumer. Further, as against such affidavit in reply filed by Respondent, Petitioner has not filed any rejoinder controverting such say of Respondent. Therefore, in respect to fact whether Respondent erstwhile GE Board has insisted or not or whether Respondent erstwhile GE Board has demanded due amount of old consumer before giving electric connection to Petitioner or not are facts which are in dispute between both parties. So, it is clear case of having a disputed question of facts and on the basis of such facts which have been disputed by other side, Petitioner is praying for refund of amount by relying upon Apex Court decision where there was a clear demand and insistence of payment of erstwhile consumer as a pre-condition for getting electric connection. Therefore, considering aforesaid factual back ground, learned Advocate Mr. R.D. Dave appearing for Petitioner has submitted that even by mistake, if any amount has been paid by Petitioner to Respondent, then also, Petitioner is entitled for refund of such amount from Respondent company. He relied upon decision of Apex Court in case of *Salonah Tea Co. Ltd. and Others Vs. Superintendent of Taxes, Nowgong and Others*, Relevant observations made by Apex Court as per Head note at page 772 are quoted as under:

Courts have made a distinction between those cases where a claimant

approaches a High Court seeking relief of obtaining refund only and those where refund is sought as a consequential relief after striking down of the order of assessment, etc. Normally speaking in a society governed by rule of law taxes should be paid by citizens as soon as they are due in accordance with law. Equally, as a corollary of the said statement of law it follows that taxes collected without the authority of law as in this case from a citizen should be refunded because no State has the right to receive or to retain taxes or monies realised from citizens without the authority of law. (Para 6) Normally in a case where tax or money has been realised without the authority of law. the same should be refunded and in an application under Article 226 of the Constitution the Court has power to direct the refund unless there had been avoidable laches on the part of the Petitioner which indicate either the abandonment of his claims or which is of such nature for which there is no probable explanation or which will cause any injury either to Respondent or any third party. It is true that in some case the period of three years is normally taken as a period beyond which the Court should not grant relief but that is not an inflexible rule. It depends upon the facts of each case.

(Para 14) The Assam Taxation (on Goods Carried by Road or Inland Waterways) Act, 1954 was declared ultra vires. A new Act was passed in 1961 and the same was declared to be intra vires by the Supreme Court. Notices were issued to the Assessee requiring him to file returns. Accordingly, returns were filed and assessment orders passed. However, the High Court declared the assessment as without jurisdiction in 1973.

Held that in the instant case tax was collected without the authority of law. Indeed the Assessee had to pay the tax in view of the notices which were without jurisdiction. The assessment was made u/s 9(3) of the Act. Therefore, it was without jurisdiction. In the premises, it is manifest that the Government had no authority to retain the money collected without the authority of law and as such was liable to refund. It was only after the decision of the High Court in 1973 that the Assessee became aware of his crystal right of having the assessment declared ultra vires and in that view of the matter in October, 1973 when the judgment was delivered in July, 1973, the Appellant came to know that there is mistake in paying the tax and the Assessee was entitled to refund of the amount paid. That was the time when the Assessee came to know of it. Within a month in November, 1973, the writ petition was filed. There was no unexplained delay. There was no fact from which it could be inferred that the Assessee had either abandoned his claims or the Govt. had changed his position in such a way that granting relief of refund would cause either injury to the Govt. or anybody else. On the other hand, refunding the amount as a consequence of declaring the assessment to be bad and recovery to be illegal will be in consonance with justice, equity and good conscience. It would not be said that the Assessee was not diligent in filing the writ petition for claiming refund.

11. Considering observations made by Apex Court as referred to above as relied

upon by learned Advocate Mr. R.D. Dave, it is necessary to note that no such specific contention has been raised by Petitioner in petition, otherwise, answer can be given by Respondent. This contention has been raised first time by Petitioner through its learned Advocate Mr. R.D. Dave at the stage of argument without any averment made to that effect in petition and it is not forming part and parcel of pleadings of the Petitioner and, therefore, such contention has been raised for the first time without pleading made in petition and therefore, Court cannot accept such contention which has been raised for the first time by Petitioner at the stage of arguments, orally, without substantiating such contention by producing some sufficient evidence on record. It is a settled proposition of law that party has to plead the case and produce sufficient evidence for substantiating the submission made in pleading and in case if pleadings are not complete, Court is under no obligation to entertain such pleas.

12. In National Buildings Construction Corporation Vs. S. Raghunathan and Others, . it was a question of legitimate expectation. There was a claim for foreign allowance by Government employee serving on deputation with Government company in their overseas projects. Question of legitimate expectation was not raised in petition and no foundation was laid in pleadings for such a plea being advanced before Court. In context of such facts, Apex Court held in paragraph 31 of judgment as under:

31. Incidentally, in this case, the question of "Legitimate Expectation" was not raised in the petition and no foundation was laid in the pleadings for such a plea being advanced before the Court. Strangely, the High Court allowed this plea at the stage of argument and allowed the petitions only on the ground of "Legitimate Expectation" without least realising that there was hardly at legitimacy in the claim of the Respondents. In the absence of pleading and the affidavit of the Respondents in support thereof, the whole exercise done by the High Court cannot but be termed to be speculative.

13. In M/s. Larsen and Toubro Ltd. Vs. State of Gujarat and Others, Apex Court observed as under in Para 10:

There were, however, no particulars stated in the petition as to how it could be so said. It is not enough to allege that a particular rule or any provision has not been complied. It is a requirement of good pleading to give details, i.e., particulars as to why it is alleged that there is non-compliance with a statutory requirement. Ordinarily, no notice can be taken on such an allegation which is devoid any particular. No issue can be raised on a plea foundation of which is lacking. Even where Rule Nisi is issued, it is not always for the department to justify its action when the Court finds that a plea has been advanced without any substance, though ordinarily department may have to place its full cards before the Court. In the present case, however, we find that the State has more than justified its stand that there has been compliance not only with Rule 4 but with Rule 3 as well, though there was no challenge to Rule 3 and the averments regarding non-compliance with Rule 4 were sketchy and without any particulars

whatsoever. High Court was, therefore, not right in quashing the acquisition proceedings in SCA 1568/87.

14. In *Vithal N. Shetti and Anr. v. Prakash N. Rudrakar and Ors.* VII (2002) SLT 52 : (2003) 1 SCC 18, Apex Court observed as under in Para 8:

8. The plaint makes a positive averment of a negative fact, that is the absence of consent in writing of the landlord to raising of the permanent structure by the tenant over the tenancy premises. In the wake of such averment in the plaint, it was necessary for the tenant to have raised specific pleading in the written statement setting out the particulars of consent in writing. Not only the particulars are not pleaded but even the factum of the landlord having given a consent in writing to the permanent construction not stated. There is not even a whisper in the written statement of such consent, on which the tenant relies, having been ever given by the landlord and forming part of the record of the Municipal Corporation. If the Municipal Corporation had expressed its inability to make available certified copies of relevant records to the Appellants, the Appellants should have taken steps before the trial Court for summoning the original record from the custody of the Municipal Authorities, which could have shown the bona fides of the plea raised by the Appellant tenant. Nothing such was done. Similarly, no effort for production of the alleged consent in writing of the landlord appears to have been made during the pendency of the proceedings before the Appellate Court. In this background, the High Court rightly declined to show its indulgence to a belated prayer for summoning the record from the custody of the Municipal Corporation.

15. In *Bharat Singh and Others Vs. State of Haryana and Others*, Apex Court observed as under in Para 13:

As has been already noticed, although the point as to profiteering by the State was pleaded in the writ petitions before the High Court as an abstract point of law, there was no reference to any material in support thereof nor was the point argued at the hearing of the writ petitions. Before us also, no particulars and no facts have been given in the special leave petitions or in the writ petitions or in any affidavit, but the point has been sought to be substantiated at the time of hearing by referring to certain facts stated in the said application by HSIDC. In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ Petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the Respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter affidavit, as the case may be, the Court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the CPC and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in

proof of such facts have to be pleaded and annexed to it. So, the point that has been raised before us by the Appellants is not entertainable. But, in spite of that, we have entertained it to show that it is devoid of any merit.

16. In light of aforesaid decision of Apex Court, submission made by learned Advocate Mr. Dave for Petitioner that amount has been paid by Petitioner by mistaken of law cannot be accepted because for that, there is no pleading in petition to that effect and such submission is not substantiated by Petitioner by producing relevant document in support of such submission before this Court. From very beginning, considering letter of Petitioner dated 2nd January, 1995 page 31, when amount has been paid by different cheques, in that letter also, it is not made clear that the aforesaid amount has been deposited or paid by Petitioner by mistaken of law as submitted by learned Advocate Mr. R.D. Dave. On the contrary, in aforesaid letter dated 2nd January, 1995, subject itself shows that the payment is for full and final settlement of dues of M/s. Deep Wires Pvt. Ltd. and it has also been made clear by Petitioner that Petitioner is making full and final settlement of dues of M/s. Deep Wires Pvt. Ltd. As Petitioner has taken over assets of M/s. Deep Wire Private Ltd. From GSFC vide GSFC's order dated 4th July, 1994 and, therefore, aforesaid amount has been paid by Petitioner as per aforesaid letter dated 2nd January, 1995 written by Petitioner to Deputy Executive Engineer, Mehsana as full and final settlement of claim of aforesaid erstwhile owner of unit. Thus, it is clear that this payment was made with open eyes and not due to any mistaken of law as submitted by learned Advocate Mr. R.D. Dave for Petitioner. Therefore, aforesaid letter of Petitioner dated 2nd January, 1995 is clear answer to negative submission made by learned Advocate Mr. Dave that if amount has been paid by Petitioner to GE Board by mistaken of law, then also, Petitioner is entitled to get refund of such amount, therefore, contention raised to that effect by learned Advocate Mr. Dave by relying upon decision of Apex Court in case of *Salonah Tea Company Ltd. etc. v. The Superintendent of Taxes, Nowgong and Ors., etc. (supra)*, cannot be accepted and in peculiar facts and circumstances of present case, said law laid down by Apex Court in said decision is not applicable to this case because it is not an amount of tax paid by Petitioner to Respondent but it was due amount of old consumer of erstwhile GE Board paid by Petitioner without raising any objection and without there being any insistence from Respondent for such payment. Therefore, contention raised by learned Advocate Mr. Dave cannot be accepted and same is, therefore, rejected.

17. Apart from that, apparently, in this case, looking to facts which are found from record and pleadings between the parties, it is purely a disputed question of fact between the parties and, therefore, such contention which has been raised by one party but disputed by other side cannot be determined in a petition under Articles 226 and 227 of Constitution of India, therefore, writ petition cannot be entertained by this Court by exercising powers under Article 226 of Constitution of India.

18. In Orissa Agro Industries Corporation Ltd. and Others Vs. Bharati Industries and Others, Apex Court observed as under in Paras 9 to 12:

9. A bare perusal of the High Court's judgment shows that there was clear non-application of mind. On one hand the High Court observed that the disputed questions cannot be gone into a writ petition. It was also noticed that essence of dispute was breach of contract. After coming to the above conclusions the High Court should have dismissed the writ petition. Surprisingly, the High Court proceeded to examine the case solely on the writ Petitioner's assertion and on a very curious reasoning that though the Appellant-Corporation claimed that the value of articles lifted was nearly Rupees 14.90 lakh no details were specifically given. From the counter-affidavit filed before the High Court it is crystal clear that relevant details disputing claim of the writ Petitioner were given Value of articles lifted by the writ Petitioner is a disputed factua question. Where a complicated question of fact is involved and the matter requires thorough proof on factual aspects, the High Court should not entertain the writ petition. Whether or not the High Court should exercise jurisdiction under Article 226 of the Constitution would largely depend upon the nature of dispute and if the dispute cannot be resolved without going into the factual controversy, the High Court should not entertain the writ petition. As noted above, the writ petition was primarily founded on allegation of breach of contract. Question whether the action of the opposite party in the writ petition amounted to breach of contractual obligation ultimately depends on facts and would require material evidence to be scrutinized and in such a case writ jurisdiction should not be exercised. (See: State of Bihar and Others Vs. Jain Plastics and Chemicals Ltd.,

10. In a catena of cases this Court had held that where dispute revolves round questions of fact, the matter ought not be entertained under Article 226 of the Constitution. (See: State Bank of India and Others Vs. State Bank of India Canteen Employees' Union and Others, Chairman, Grid Corporation of Orissa Ltd. (Gridco) and Others Vs. Smt. Sukamani Das and Another,

11. In the instant case the High Court has itself observed that disputed questions of fact were involved and yet went on to give directions as if it was adjudicating the money claim in a suit. The course is clearly impermissible. (See: General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur, U.P. Vs. Satrugan Nishad and Others, Rourkela Shramik Sangh Vs. Steel Authority of India Ltd. and Another,

12. In National Highway Authority of India Vs. Ganga Enterprises and Another, it was observed by this Court that the question whether the writ petition was maintainable in a claim arising out of a breach of contract should be answered first by the High Court as it would go to the root of the matter. The writ Petitioner had displayed ingenuity in its search for invalidating circumstances; but a writ petition is not an appropriate remedy for impeaching contractual obligations. (See: Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others, and Divisional Forest Officer Vs. Bishwanath Tea Co. Ltd.,

19. In Sanjay Sitaram Khemka Vs. State of Maharashtra and Others, Apex Court observed as under in Paras 9 and 10:

9. Having regard to the allegations and counter-allegations made by the parties before us, we are of the opinion that no relief can be granted to the Petitioner in this petition. The writ petition has rightly been held by the High Court to be involving disputed questions of fact. The Petitioner has several causes of action wherefor he is required to pursue specific remedies provided therefor in law.

10. A Writ Petition, as has rightly been pointed out by the High Court, for grant of the said reliefs, was not the remedy. A matter involving a great deal of disputed questions of fact cannot be dealt with by the High Court in exercise of its power of judicial review. As the High Court or this Court cannot, in view of the nature of the controversy as also the disputed questions of fact, go into the merit of the matter; evidently no relief can be granted to the Petitioner at this stage. We are, therefore, of the opinion that the impugned judgment of the High Court does not contain any factual or legal error warranting interference by this Court in exercise of its jurisdiction under Article 136 of the Constitution.

20. In view of facts which are found from record, there is no demand made by Respondent from Petitioner that first Petitioner should make payment of due amount of erstwhile consumer and thereafter only, electric connection will be given and there is also no insistence made by Respondent to Petitioner to make payment of dues of erstwhile owner for getting electric connection, as per reply filed by Respondent which is not controverted by Petitioner by filing any rejoinder. Further, learned Advocate Mr. Dave for Petitioner is also not able to point out on the basis of any document received by Petitioner from Respondent in writing to show that Respondent insisted for such payment of dues of erstwhile consumer first for getting electric connection and there is no any document produced by Petitioner which would substantiate say of Petitioner that Respondent has demanded due amount of old consumer from Petitioner and due to that only, amount is paid by Petitioner, for which, Petitioner is legally not liable to pay such amount of old consumer. According to my opinion, decision relied upon by learned Advocate Mr. Dave for claiming refund of amount is not applicable to facts of present case because there is no demand or insistence made by Respondent to Petitioner in respect of due amount of old consumer and, therefore, decisions referred to and relied upon by learned Advocate Mr. Dave are not applicable to facts of present case.

21. I have considered in detail submissions made by both learned Advocates. I have also considered the law which has been relied upon by both parties. I have also considered pleadings of both parties. According to my opinion, in light of these disputed question of facts and also in absence of any insistence or demand from Respondent for payment of dues of erstwhile consumer for getting electric connection, law which has been relied upon by learned Advocate Mr. R.D. Dave is not applicable as such disputed questions of fact cannot be effectively decided in a writ petition and, therefore, this Court cannot entertain such writ petition

exercising powers under Article 226 of Constitution of India. Therefore, according to my opinion, contentions raised by learned Advocate Mr. Dave for Petitioner cannot be accepted. Same are, therefore, rejected. Hence there is no substance in this petition and, therefore, this petition is dismissed. Notice is discharged. No order as to costs.