

(2017) 02 AHC CK 0048
In the Allahabad High Court
Case No : Misc. Bench No. 2645 of 2017

Jitendra Kumar Gupta

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 07-02-2017

Acts Referred:

Citation : (2017) 3 ADJ 441 : (2017) 3 AILLJ 37 : (2017) 2 AllWC 1098

Hon'ble Judges : Amreshwar Pratap Sahi and Sanjay Harkauli, JJ.

Bench : Division Bench

Advocate : C.S.C and Amit Kumar Dwivedi, Counsels, for the Respondents;
Karunesh Singh Pawar and Anand Shanker Asthana, Counsels, for the Petitioners

Final Decision : Disposed Off

Judgement

Amreshwar Pratap Sahi and Sanjay Harkauli, JJ. - This writ petition has been filed by the petitioners who are admittedly the subsequent purchasers of a premises praying that they are being illegally denied an electricity connection on the ground that there are electricity dues on the premises which have not cleared off till date.

2. The ground taken by the petitioners is that such a liability cannot be fixed on the petitioners inasmuch as the liability was on one Mr. Shamshuddin Ahmad who was the tenant of the premises and the original owner whereof was Smt. Sheela Srivastava. Smt. Sheela Srivastava had made a complaint on 21.07.2015 to the Executive Engineer informing him that Shamshuddin Ahmad is no longer the tenant as his lease has already expired and he is in unlawful occupation of the premises and, therefore, if he is committing any theft of electricity, appropriate action should be taken against him and no fresh connection should be given to him. This application is Annexure- 11 to the writ petition.

3. It appears that the premises came to be purchased by the petitioners from Smt. Sheela Srivastava and they applied for fresh connection. It is at this stage that the Electricity Department started insisting upon the clearing of the dues

that was there against Shamshuddin Ahmad against whom proceedings for theft of electricity had been undertaken. Aggrieved on account of no connection being provided, the petitioners filed Writ Petition No. 11381 of 2016 (MB) that was disposed of on 27th of May, 2016 by the following order:

"Heard learned counsel for the petitioner and Sri A.M. Shukla for the respondent Power Corporation. This writ petition has been filed for a mandamus directing the opposite parties to provide a new electricity connection of 4KW to the petitioner. Sri Shukla on the basis of instructions given by one Sri Amar Singh, Sub-Divisional Officer, opposite party no. 3, states that the premises earlier belonged to somebody else and the petitioner is the subsequent purchaser. There was a report of electricity theft in the said premises and there are electricity dues of about Rs. 2,80,000/- against the said premises which is to be realized from the erstwhile owner.

Learned counsel for the petitioner has been duly informed about the same. He may collect the relevant papers from the Sub-Divisional Officer concerned and apply in accordance with law for an electricity connection. The Executive Engineer may take an appropriate decision in accordance with law under the Electricity Supply Code, 2005 within six weeks from the date an application is moved along with a certified copy of this order before him.

The writ petition is disposed of with the said observations."

4. The contention of Sri K.S. Pawar, learned counsel for the petitioners is that the petitioners had completed all the formalities and since the liability on Sri Shamshuddin Ahmad was that of theft which is a personal criminal liability, the said dues are not dues on the premises and, therefore, the Electricity Department cannot insist upon realizing the same from the petitioners who are the subsequent purchasers.

5. Sri Pawar further submits that this fact that there is no valid connection has been clearly stated in the sale-deed executed in favour of the petitioners by the erstwhile owner and that the petitioners shall be entitled to apply for a new connection and consequently, there being no legal impediment, the respondents were obliged to grant the connection. He therefore submits that any such dues as alleged against Shamshuddin Ahmad cannot be an impediment in the grant of a new connection to the petitioners.

6. Learned counsel for the respondent-Electricity Department Sri Amit Kumar Dwivedi submits that the petitioners are subsequent purchasers and the dues are on the premises. It is open to the Electricity Department to realize the same from the purchasers as well in view of the provisions contained in Clause 4.3(f) of the U.P. Electricity Supply Code, 2005. He submits that the liability is clearly on the subsequent purchasers as well and even if the Electricity Department has issued a recovery certificate against the defaulter, namely, Sri Shamshuddin Ahmad, the same does not absolve the petitioners from obtaining a no dues certificate and then moving an application for fresh connection. Since the dues

are still outstanding, the petitioner can be granted a fresh connection only after its clearance.

7. Having heard learned counsel for the parties, the provisions of Regulation 4.3(f)(i)(ii) and (iii) of the Electricity Supply Code, 2005 are extracted hereunder:

"(i) It will be the duty of the seller and of the purchaser to find out the outstanding electricity dues up to the date of sale, and further that both seller and purchaser will be either/or, jointly and severally liable to pay the outstanding electricity dues/obtain No dues certificate.

(ii) Before sale of a premise is made, the outstanding dues will be cleared and, in the alternative the deed to agreement/sale will specifically mention the outstanding dues and the method of its payment. "Outstanding dues" means all dues pending on a premises including late payment surcharge.

(iii) In case the no-dues certificate is not obtained by the old owner, new owner before purchase of property may approach the licensee for no-dues certificate by giving the reference of the connection in said premises. The licensee shall either intimate the pending dues, if any, on the premises or issue no dues certificate within 30 working days from the date of application."

8. A conjoint reading of these provisions would indicate that the same does not distinguish the outstanding dues between any liability arising out of theft or out of assessment. Even otherwise, the case of theft being against Shamshuddin Ahmad, the premises was also assessed for having consumed electricity and it is the assessed amount which is sought to be recovered.

9. In our considered opinion, the outstanding dues as defined in the provision aforesaid is on a premises and consequently this is realizable from the person occupying the premises. This is more clear in the case of a subsequent purchaser where an obligation has been cast for a recital either in the agreement to sell or in the document of sale to include a clear Clause that the dues shall be cleared off and the mode of its clearance shall also be prescribed. It is, thus, obligatory on the part of a subsequent purchaser to clear off the outstanding dues.

10. Learned counsel for the petitioners then contends that the dues cannot be realized from the petitioners in the absence of a valid connection and secondly the dues are against a person who has consumed electricity as a tenant and is not due from the petitioners.

11. We are unable to accept any of these submissions inasmuch as the dues are electricity dues which may be either on account of a grant of connection or otherwise on account of an assessment after theft. The words "Outstanding dues" cannot be therefore bifurcated in the sense so as to mean only dues against a valid connection. It includes within it's told all dues arising out of electricity consumption in a premises in any form.

12. Apart from this, the contention that the dues cannot be realized from two

persons at the same time, suffice it to say that the power to realize it from the subsequent purchasers is also there without denuding the Electricity Department from pursuing the collection of the dues from the original defaulter. However, this is subject to adjustment of the outstanding dues and the Electricity Department will collect only the amount to the extent that is realizable and not beyond the same. Thus, if the petitioner is depositing the amount to clear off the dues and if the dues are also recovered pursuant to the citation from Shamshuddin Ahmad, then the petitioners would be entitled to an adjustment of the amount that would be realized as against Shamshuddin Ahmad.

13. At this juncture, Sri Dwivedi, learned counsel for the respondent-Corporation was called upon to seek instructions from the respondents as to whether the petitioners would be extended any accommodation in the mode of payment for giving a no dues certificate and providing them a fresh connection. Sri Dwivedi submits that at the moment if the petitioners deposit 50% of the amount that is due against the premises, the respondent shall consider grant of connection and extending the benefits thereof accordingly.

14. In view of the aforesaid position that emerges, we direct that the petitioners shall deposit 50% of the amount that is due with the respondents and then the Executive Engineer, namely, the respondent no. 4 upon such deposit shall proceed to grant connection to the petitioners that shall be subject to payment of the dues in future.

15. This deposit and its adjustment will be without prejudice to the rights of the Electricity Department and the State to proceed to recover the amount from Sri Shamshuddin Ahmad and in the event, any amount is recovered from him then such amount shall be adjustable towards the payment made by the petitioner as directed here-in-above. We also clarify that passing of this order will not impede the recovery proceedings in any way against Sri Shamshuddin Ahmad till the full amount is realized.

16. With the aforesaid directions, the writ petition stands disposed of.