

KERALA HIGH COURT

Souriyar Luka

Vs.

Kerala State Electricity Board

A.S. No. 130 of 1958

(Kumara Pillai and T.K. Joseph, JJ.)

27.10.1958

JUDGMENT

T.K. Joseph, J.

1. This is an appeal from an order dismissing an original petition filed by the appellant under Article 226 of the Constitution.

2. The Palai Mills Ltd., owed money to the 1st Respondent the Kerala Electricity Board, as cost of power supplied, sales tax, etc., and the building and machinery of the company were attached and sold under the Revenue Recovery Act for realization of the same. The petitioner purchased the building and machinery in revenue sale for a sum of Rs. 565 and after confirmation of the sale he applied for the supply of electricity for running the mill in the building. This was refused on the ground that the Palai Mills Ltd., still owed a sum of Rs. 579 nP. 24 as arrears and interest and that the said sum also had to be paid before the prayer could be granted. This was communicated to the petitioner by the Chief Engineer's letter Ext. P1 dated 20-12-1957 which reads as follows :

"With reference to the petition cited above, Sri Souriar Luka is informed that the arrears have to be remitted to this Board before he can get reconnection of the service. An amount of Rs. 579-24 is outstanding against the old consumer and Rs. 3-921 will accrue monthly as interest till the date of payment."

The original petition which was filed to quash the decision upholding the 1st Respondent's objection was dismissed and the petitioner has therefore preferred this appeal.

3. The only objection raised by the 1st Respondent was that the payment of arrears due from the Palai Mills Ltd., could be insisted on as a condition precedent for the supply of electricity to the

premises formerly owned by the defaulting company and purchased by the petitioner in revenue sale. This objection was upheld on the strength of Section 24(1) of the Indian Electricity Act (IX of 1910). The learned Judge observes :

"Section 70(2) of the Electricity (Supply) Act, 1948 provides :

"Save as otherwise provided in this Act, the provisions of this Act shall be in addition to , and not in derogation of, the Indian Electricity Act, 1910 (9 of 1910).

and the submission of the learned Advocate General on behalf of the respondents is that Ext. P1 is fully justified by Section 24(1) of the Indian Electricity Act, 1910 :

"Where any person neglects to pay any charge for energy of any sum, other than a charge for energy, due from him to a licensee in respect of the supply of energy to him, the licensee may, after giving not less than seven clear days' notice in writing to such person and without prejudice to his right to recover such charge or other sum by suit, cut off the supply and /or that purpose cut or disconnect any electric supply line or other works, being the property of licensee, through which energy may be supplied, and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply are paid, but no longer."

According to him the emphasis is on the premises and it is immaterial whether the arrears are due from the applicant himself or his predecessor-in-title."

4. This contention was upheld by the learned Judge. Section 24(1) is not capable of the construction put on it by the 1st Respondent. It does, not contain any reference to "the premises" of the person in default. On the other hand it states what the powers of a licensee are when any person neglects to pay any charge for energy or sum other than charge for energy 'due from him,' (the underlining (here in * *) is ours). The purchaser of the premises in revenue sale held for the purposes of recovering dues from a defaulting consumer is not a person from whom any amount is or can be deemed to be due and he is not in the position of one on whom premises have devolved by succession or voluntary transfer. The amount due from a consumer to the licensee is not a charge on the premises used by such consumer and the purchaser of the premises in revenue sale gets a clear title, subject to such encumbrances as may have existed on the date of the attachment under the Revenue Recovery Act. The real test is whether the applicant is a legal representative of the defaulter. The appellant is to be treated as a fresh applicant and not a successor-in-interest of the Palai Mills Ltd., in which case alone the liability of the predecessor-in-interest could be deemed to have devolved on him. The appellant cannot be treated as a person bound to pay the arrears due from the original owner. The condition now insisted on was not one of the conditions of the revenue sale either. We therefore hold that the order Ext. P1 must be quashed and the petition allowed.

5. In the result we set aside the order dismissing the original petition and allow the appeal with co-its throughout, including Advocate's fee of Rupees 100/- for the appeal and another sum of Rs. 100/- for the proceedings before the Single Judge which the appellant is allowed to recover from the 1st respondent. The respondents are directed to bear their costs.
Appeal allowed.