

**(2012) 02 DEL CK 0497**

**Delhi High Court**

**Case No:** Writ Petition (C) No. 134 of 2011

Laxmi Devi

APPELLANT

Vs

NDPL

RESPONDENT

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**Date of Decision:** Feb. 27, 2012

**Citation:** (2012) 128 DRJ 607

**Hon'ble Judges:** Hima Kohli, J

**Bench:** Single Bench

**Advocate:** Mukul Dhawan, for the Appellant; Manish Srivastava, for the Respondent

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### **Judgement**

Hima Kohli, J.

The present writ petition is filed by the petitioner praying inter alia for directions to the respondent/NDPL to grant her a new permanent electricity connection on the third floor of premises bearing No. 1820-A, Rani Bagh, Shakurbasti, New Delhi, owned by the petitioner, as granted to the resident of the first floor of the same building on 29.7.2010, without insisting on her paying any amount on a pro-rotta basis in terms of the intimation letter dated 20.12.2010 (Annexure-D). Counsel for the petitioner states that the petitioner had purchased the third floor of the subject premises measuring 35 sq. yards, by virtue of a Registered Sale Deed dated 11.8.2008. One month before the execution of the aforesaid sale deed, the first floor of the subject premises was purchased by one Mr. Shyam Sunder Lal, vide Registered Sale Deed dated 18.7.2008. On 27.7.2010, upon the owner of the first floor of the subject premises applying to the respondent/NDPL for grant of a permanent electricity connection, the respondent/NDPL granted him the same without insisting that he pay any dues with respect to the electricity charges against the earlier electricity connection energizing at the said premises. However, when the petitioner approached the respondent/NDPL for grant of a new electricity connection in respect of the third floor of the premises, respondent/NDPL issued her a letter dated 20.12.2010 informing her that the department had come across outstanding dues in respect of the subject premises to the tune of Rs. 14,20,559/-

and her application for grant of a new permanent electricity connection could be considered only if she would clear the dues on a pro-rata basis. Aggrieved by the aforesaid decision of the respondent/NDPL, the present petition was filed by the petitioner on 24.12.2010.

2. Counsel for the petitioner states that the arrears of electricity dues claimed by the respondent/NDPL are in respect of a single storeyed structure built in the subject premises as it earlier existed whereas, a separate structure was raised later on in the year 2006 on a portion of the same plot. He states that that the entire plot in question in respect of property bearing No. 1820-A, Rani Bagh, Shakurbasti, New Delhi measures 135 sq. yards, on which there had earlier existed only a single storeyed structure on land measuring 100 sq. yards. However, the structure on which the third floor was purchased by the petitioner was built in the year 2008 on the remaining area measuring 35 sq. yards from out of the total of 135 sq. yards and that the disputed amount in question relates to the permanent electricity connection granted to the earlier built-up structure on 100 sq. yards, which the petitioner is not liable to pay. It is further asserted that the respondent/NDPL has discriminated against the petitioner inasmuch as while refusing to grant her a permanent electricity connection on the ground that there were arrears existing in respect of the subject premises, a fresh electricity connection was granted in respect of the first floor of the same property without demanding any such arrears on a pro-rata basis from the owner of the said floor.

3. Notice was issued on the present writ petition on 11.1.2011. On 10.2.2011, it was observed that as per the provisions of the Delhi Apartment Ownership Act, 1986, whereunder, independent status has been conferred on apartments within the meaning of the said Act, in respect of a property that has four or more apartments, merely because there were dues with respect to the earlier existing single storeyed structure in the subject premises and over a period of time, separate floors had been added to the property, the purchasers of the said floors, which are new construction, could not be saddled with the old dues. It was also noticed that the respondent/NDPL had filed a counter affidavit stating inter alia that the accused in the theft case, lodged by the respondent/NDPL where Rs. 9,86,544/- was claimed as civil dues, had been acquitted and the said order had attained finality. In view of the above, counsel for the respondent/NDPL was directed to address arguments on the aspect as to whether after the said acquittal, the civil claim for the said dues would survive for seeking recovery thereof from the petitioner on a pro-rata basis.

4. On 15.2.2011, the respondent/NDPL was directed to grant a permanent electricity connection to the petitioner upon her making compliance of all commercial formalities, but with the right given to the respondent to disconnect the same in the event of the petition ultimately failing. It was also clarified that the petitioner would then have no right to claim refund of any commercial charges paid by her to the respondent/NDPL and she would remain liable to pay the consumption charges and

the electricity meter would be liable to be disconnected in the event of non-payment of the said consumption charges. It was further clarified that the said order would not be a bar on the respondent/NDPL from making recovery of the arrears from the other flats/occupants.

5. Today, counsel for the respondent/NDPL submits that the sum of Rs. 14,20,559/-, demanded by the respondent/NDPL from the petitioner, vide letter dated 20.10.2010, on a pro-rata basis comprises of three separate demands, which are as below:

(i) An electricity theft bill of Rs. 4,34,015/- raised against one Mr. Manohar Lal and subject matter of a criminal complaint bearing CC No. 391/2009 lodged by the respondent/NDPL and still pending adjudication before the Special Electricity Court.

(ii) A theft assessment bill of Rs. 9,86,544/- raised upon Mr. Sunder and Mr. Rajesh, legal heirs of late Shri Manohar Lal, original owner of the subject premises, subject matter of an FIR No. 16/2007 lodged by the respondent/NDPL, wherein an order dated 13.5.2008 was passed by the Special Electricity Court acquitting the accused therein on the ground that "respondent could not prove, who indulged in direct theft of electricity".

(iii) A bill of Rs. 95,882/- raised by the respondent/NDPL and subject matter of FIR No. 572/2007 registered against Mr. Sundar and Mr. Rajesh, legal heirs of late Shri Manohar Lal. However, the said theft bill is stated to have been settled for an amount of Rs. 47,450/- before the Special Electricity Court.

6. In view of the fact that out of the total outstanding dues of Rs. 14,20,559/-, a bill for a sum of Rs. 95,882/- already stands settled with the legal heirs of late Shri Manohar Lal and the assessment bill of Rs. 9,86,544/-based on FIR No. 16/2007 could not be recovered due to the acquittal of the accused therein in terms of order dated 13.5.2008 passed by the Special Electricity Court, which has attained finality, the respondent/NDPL cannot saddle the liability pertaining to the aforesaid assessment bills on the petitioner herein, for the obvious reason that the respondent/NDPL could not place sufficient evidence on record before the Special Electricity Court so as to establish as to who had indulged in the direct theft of electricity.

7. In such circumstances, when the liability itself could not be fastened by the respondent/NDPL on any particular person in respect of the arrear of electricity that related to the years 2006-2007, the question of fastening the liability on a pro-rata basis on the petitioner herein, who had purchased the subject premises only in the year 2008, does not arise. Similarly, the bill of Rs. 95,882/- having been settled by the respondent/NDPL with the legal heirs of late Shri Manohar Lal for a sum of Rs. 47,450/-, no claim can be lodged by the respondent/NDPL against the petitioner for payment of the said bill on a pro-rata basis.

8. This leaves the electricity bill of Rs. 4,34,015/-, which is stated to be the subject matter of a complaint bearing CC No. 391/2009 and pending adjudication before the Special Electricity Court. Considering the fact that the aforesaid complaint case lodged by the respondent/NDPL is pending adjudication in the Special Electricity Court, at this stage, the respondent/NDPL cannot insist that the petitioner pay any amount whatsoever towards the aforesaid bill till the criminal case is adjudicated and a judgment rendered by the Special Electricity Court. Therefore claiming any amount from the petitioner in respect of the said bill on a pro-rata basis is not permissible.

9. It is made clear that the aforesaid observations are made in the peculiar facts and circumstances of the present case, where the theft took place in the year 2006 when the third floor at the premises in question had not even been constructed. In such circumstances, this Court finds substance in the submissions made by the counsel for the petitioner that the petitioner was neither in occupation of any portion of the subject premises, wherein the theft is stated to have taken place, nor did any construction exist on part of the plot measuring 35 sq. yards, which forms a part of 135 sq. yards of plot area, subject matter of the present petition. It is also relevant to note that while the respondent/NDPL is harping about recoveries to be made from the petitioner herein on a pro-rata basis, for the reasons best known to it, it did not chose to assert its right to claim any amount on a pro-rata basis from the resident/owner of the first floor of the subject premises who is similarly situated as the petitioner herein.

10. Counsel for the respondent/NDPL states that the recoveries on pro-rata basis were not made from the owner/occupier of the first floor of the subject premises for the reason that an order had been passed by the Consumer Grievance Redressal Forum, prohibiting the respondent/NDPL from doing so. If the respondent/NDPL was aggrieved by the said order, it was for it to have assailed the said order in an appeal. However, admittedly, no such appeal was preferred by the respondent/NDPL.

11. In view of the aforesaid facts and circumstances and considering the fact that during the pendency of the present writ petition, the petitioner has been duly granted a permanent electricity connection in terms of the order dated 15.2.2011, the present petition is allowed by setting aside the impugned demand letter dated 20.12.2010 raised by the respondent/NDPL on the petitioner calling upon her to pay a sum of Rs. 14,20,559/- on a pro-rata basis. It is however clarified that the decision passed in the present case shall not come in the way of the Special Electricity Court in adjudicating the aforesaid complaint bearing CC No. 391/2009 lodged by the respondent/NDPL against the successors-in-interest of late Shri Manohar Lal and pending adjudication. The petition is disposed of, while leaving the parties to bear their own costs.