

**GUNARATNE AND ANOTHER
V.
CEYLON ELECTRICITY BOARD AND OTHERS**

COURT OF APPEAL
GUNASEKERA, J.
C.A. 1139/88
16 JANUARY, 1990

Writ of Mandamus - Ceylon Electricity Board Act, No. 17 of 1969 - Supply of electrical energy - Right to claim previous arrears from new occupier.

Held-

Under s. 50 of the Electricity Act a licensee cannot demand from a subsequent occupier of premises the payment of arrears due from a previous occupier as a condition precedent for the supply of electrical energy to the new occupier.

APPLICATION for a writ of mandamus on the respondent to connect supply of electrical energy.

L. V. P. Wettasinghe with Saliya Matthew and Miss. S. M. Senaratne for 2nd petitioner.

Chula de Silva, P.C. with M. Hussain, R. Develigama and C. Liyanapatabendi for the respondents.

Cur. adv. vult.

12 September 1990.

GUNASEKERA J.

The Petitioners have filed this application on 9th Nov. 1988 and prayed for a declaration to the effect that :

- (1) the action of the 1st Respondent in withholding a supply of electrical energy to premises No. 5, 4th Lane, Ratmalana is unlawful;
- (2) the action of the 1st, 2nd and 3rd Respondents in calling upon the Petitioners to pay the arrears due from the former occupier of premises No. 5 4th Lane, Ratmalana, as a condition of reconnecting the electrical supply is unlawful;
- (3) the Petitioners as owners occupiers of premises No. 5, 4th Lane Ratmalana have been denied equality of treatment vis-a-vis other consumers of electrical energy in the locality.
- (4) imposing a service charge as distinct from a reconnection charge for reconnecting electricity supply to premises No. 5, 4th Lane Ratmalana is unlawful.

and prayed for the grant and issue of a Mandate in the nature of a writ of a Mandamus directing the 1st, 2nd and 3rd Respondents to supply electrical energy to premises No. 5, 4th Lane Ratmalana forthwith without calling for any further payment whatsoever and for costs.

The 1st Petitioner's case is that he became the tenant of premises No. 5, 4th Lane Ratmalana with effect from 1st August 1988 having taken it on rent from the 2nd Petitioner who is its owner.

In his petition the Petitioner claimed that the 1st Respondent was a Corporation established under the Ceylon Electricity Board Act No. 17 of 1969 and has all the powers of a licensee under Sec. 81 of the Electricity Act. The 2nd Respondent was the General Manager of the 1st Respondent and under sec. 5 of the Electricity Board Act was vested with the organisation and execution of the powers, functions and duties of the 1st Respondent and the administrative control of the employees of the 1st Respondent and that the 3rd

Respondent was the Electrical Engineer and was a servant and Agent of the 1st Respondent.

The Petitioner submitted that premises No. 5 and 5A, 4th Lane Ratmalana were twin residential houses which were tenanted for about 20 years by one Mrs. G. R. Amarasekera and Mrs. X. I. M. Peries respectively and that electrical supply to premises No. 5, 4th Lane Ratmalana had been disconnected by the 1st Respondent at the request of the former tenant Mrs. Amarasekera by her letter dated 19th July 1987 as she was vacating the premises.

It was the case of the 1st Petitioner that the 2nd Petitioner submitted a written application to the 3rd Respondent on form 03/16 for the reconnection of electrical energy and change of consumer to premises No. 5, 4th Lane on or about 20th July 1988 the receipt of which was acknowledged by letter of 26th July 1988 and the 2nd Petitioner was required to furnish further particulars. On furnishing the required particulars by the 2nd Petitioner on or about 2nd August 1988 a letter was issued by the 3rd Respondent along with paying vouchers for Rs. 100/- and Rs. 500/- respectively being reconnection charges and security deposit. These sums of money were duly paid at the office of the 1st Respondent on 2nd August 1988.

The 1st Petitioner claims that he also paid sums of Rs. 100/- and Rs. 500/- in cash in respect of adjoining premises bearing assessment No. 5A, 4th Lane Ratmalana on behalf of his wife on the same day as security deposit and reconnection charges and the receipts in respect of premises 5A were given to the Petitioner but not those in respect of premises No. 5. The 1st Petitioner stated that one Mr. Mahinda of the consumer section of the 1st Respondent's office to whom the application of the 2nd Petitioner along with the paying in vouchers, duly paid for Rs. 500/- and Rs. 100/- being security deposit and reconnection charges in respect of premises No. 5 were given had informed him that no service connection could be granted in respect of premises No. 5 as arrears amounting to Rs. 491/- was due from Mrs. E. R. Amerasekera the previous occupier who was the former tenant of the premises.

The 1st Petitioner contended that the refusal of the Respondents to supply electrical energy to premises No. 5 is unlawful and prayed for relief as set out in the prayer to the Petition.

The Petitioner submitted that the previous occupier of the premises in question had given ample notice to the Respondents to have the supply of electricity disconnected by letter dated 24th March 1987 but the Respondents are alleged to have disconnected the supply 18 months later on 28.8.1988 and that he was not liable in law to pay any arrears of the previous occupier.

His contention was that the premises were locked and the main switch switched off and the gate closed and padlocked from 7.4.87 after the previous occupier had left and that nobody had access to it. His position was that any purported readings after 7.4.87 cannot be correct as no access was possible to the premises to read the meter.

The 1st Petitioner also contended that there was a duty cast by statute namely the Electricity Act as amended by the Ceylon Electricity Board Act to supply electrical energy to him in terms of section 83.

Learned Counsel for the Respondents contended that although the previous occupier had left the premises in question the meter reading card marked R1 clearly shows that electricity has been consumed in the premises up to November and that it should be presumed that such consumption had been by the Petitioner or consumed on his behalf.

In the circumstances the learned Counsel submitted that the Petitioner was liable in law to pay for such consumption before electrical energy is reconnected to the premises.

On a consideration of R3 it appears that although the Respondents have been informed well in time by letter dated 24.3.87 that the previous occupier was leaving the premises on 7.4.87 that they have failed to disconnect the supply for a considerable length of time.

On the material placed by the respondent in this case there is nothing to controvert the position taken up by the Petitioners that this premises was unoccupied and locked up from 7.4.87.

A consideration of the provisions of section 50 of the Electricity Act reveals that a licensee cannot demand from a subsequent occupier of premises the payment of arrears due from a previous occupier as a condition precedent for the supply of electrical energy. This

section states that "Where the occupier of any premises to which energy has been supplied for his use by a licensee, leaves the premises without paying all sums due from him to the licensee in respect of the energy supplied or in respect of meter rent, the licensee shall not be entitled to demand from the next occupier of the premises as a condition of the supply of energy to him, payment of the sum so left by the former occupier".

On a consideration of the material placed before me, I am of the view that the Respondents are not entitled to demand from the Petitioner the payment of arrears due on account of the electrical energy supplied to this premises for the period April to November 1987.

In the circumstances the Petitioner is entitled to the relief prayed for. Accordingly the Respondents are directed to supply electrical energy to No. 5, 4th lane Ratmalana without calling for any further payment. The Petitioner's application is allowed with costs.

Application allowed.