

D-717

BEFORE THE ELECTRICITY OMBUDSMAN

9/2, 6th Floor, Mahalakshmi Chambers, M.G Road, Bangalore – 560 001

Present: B.N.Krishnaiah
Electricity Ombudsman

Case No.OMB/B/G-262/2016

Dated : 27.06.2016

G.N.Janardhan
G.T.Gurunath
449 & 450 in Sy.No.25,
Agrahara Layout, Yelahanka,
Bengaluru – 53

... Appellants

(By Sri M.A.Delvi, Advocate)

V/S

1. The Chairperson
CGRF, Bangalore Urban District,
BESCOM, Bengaluru.

2. The Assistant Executive Engineer (Elecl)
C-8 sub-division, BESCOM,
Bengaluru

3. Sri Eranna,
S/o Gangaiah,
Aged about 35 years,
Residing at No.449, 450,
3rd Main Road, 21st Cross,
Agrahara layout, Yelahanka Hobli,
Bengaluru North Taluk,
Bengaluru – 560 064

... Respondents

(R-2 party in person)
R-3 by Sri J.C.Kumar, Advocate

1. This is an appeal under clause 21.02 of KERC (CGRF & Ombudsman) Regulations, 2004 against the orders passed by CGRF, BESCO, Bangalore Urban District, Bengaluru, dated 23.05.2016.

2. Initially, the matter was taken up for hearing on 15.06.2016 and the Advocate for appellant, the AEE and the Advocate for Caveator were present. Considering the appellant's request, this Authority granted an interim order directing the respondents to restore the electricity connection to the installations of the appellants. Aggrieved by this, the Caveator vide his letter dated 16.06.2016 had requested to advance the case. The same was considered and the notices were issued to the Advocate for the appellants, AEE and the Advocate for the caveator. The case was advanced from 30.06.2016 to 21.06.2016. The Advocate for Caveator filed the statement of objections, and impleading application. The impleading application was allowed.

3. Sri M.A.Delvi, the learned Counsel for the appellants vehemently argued that the Caveator is not a consumer, he is not an affected party, and he could not have filed the caveat before the Ombudsman, and this Authority has no jurisdiction to accept the Caveat; the Caveator is a third party and third party has no place in the scheme of things, Section 148-A of CPC is not attracted; the appellants are in possession of the property and electricity is a basic necessity; the appellants have obtained the electricity connection for the dwelling units; the suits filed by the Caveator in the Civil Court is dismissed.

4. Sri J.C.Kumar, the learned Counsel for the Caveator argued that the appellants has not produced any document. The caveat is maintainable, and the caveator is a necessary party. The Caveator Earanna is not a party in the

suit referred by the appellants; no injunction has been granted against Eranna. The appellants have secured the electricity connection from the AEE without producing the stipulated documents. Revenue documents are in the name of the Caveator. Based on the legal opinion of the Law officer in BESCO, the AEE has passed the order of disconnection and electricity has been disconnected. Further, argued that the appellants have not obtained the Khata Certificate from the revenue authorities nor have they obtained Form No.9 and 10 from the Gram Panchayat; PID number not given to the appellants. The appellants have not proved possession, they have not proved they are the owners of the property.

5. The important contentions raised by the Appellant in the Appeal Memo are as follows :

- (a) The appellants are the owners in occupation and possession of two plots bearing Nos.449 and 450 in survey number 25, Agrahara Layout, Yelahanka, Bengaluru. They made application for electricity connection on 18.08.2011;
- (b) The complainants are embroiled with an adverse and pretentious claimant to this property who has created certain papers and documents and continues to harass by filing frivolous injunction suits which are being regularly dismissed by Hon'ble Courts. The BESCO authorities at his behest demanded production of 'A' Khatha in respect of an area which as a matter of policy of the BBMP is not eligible for the same as the matter is pending before the Hon'ble High Court of Karnataka tied with the issue of what is called as 'Akrama Sakrama' Schemes;

- (c) The respondent sub-division for no reason whatsoever by letter dated 16.09.2015 demanded production of Khatha which were serviced on 18.08.2011 by filing such documents necessary to avail service. Even proof of occupancy itself was sufficient to avail service to a residential installation;
- (d) The appellants in response to the demand filed a detailed reply and produced the `B' Khatha granted to revenue plot copies of the necessary Court orders were too enclosed to set at rest any doubts with regard to the authenticity of the documents filed before the respondent;
- (e) On 9.10.2015 installations were disconnected on the ground that `A' Khatha was not produced. The appellants are victims in the hands of AEE, who by this action was acting hand-in-glove with the opposite party in the civil dispute. The respondent AEE was acting for collateral consideration and flouting the provisions of Conditions of Supply of Electricity.
- (f) The complaint before the CGRF was heard and hearing closed and the matter was reserved for orders on 24.11.2015. The impugned order is colourable and bad in law;
- (g) G.Eranna a total stranger to the complaint in the caveat filed by him before the Hon'ble High Court dated 30.05.2016 asserts at para 3 of the caveat that "on his objections the impugned order has been passed". This establishes the fact that the Forum has entertained the objections of a non-party and a non-consumer, re-opened a closed and "reserved for orders" case to entertain objections behind the back of the consumer and passed orders to support the case of the

caveator to the disadvantage of the appellant. The CGRF was given the hue of a civil court to help a pretentious claim of a pretender to property;

(h) The issue before the Forum was limited to continuity of the electricity in view of the litigations before the appropriate Court of law wherein the opponents case had been thrown out and in the other case dismissed the plea for any temporary injunction.

6. The learned Counsel for the Caveator/respondent No.3 has filed the statement of objections interalia contending as follows :

(a) The appellant is not maintainable, appeal is frivolous, vexatious and is filed with malafide intention to make unlawful gain;

(b) Appeal is filed without producing any single document and suppressing the material facts and have obtained the order of restoration;

(c) The respondent No.3 is the absolute owner and in lawful possession and enjoyment of the site bearing number 450 formed in survey number 25 formerly Agrahara village and now Agrahara layout, Yelahanka Hobli, Bengaluru North Taluk. Originally the said site was allotted in favour of his mother Smt.Bylamma in the year 1972 in view of the celebration of 28th independence day i.e. 11.11.1972 and issued the Hakku Patra and handed over possession. Bylamma was in lawful possession and enjoyment of the said site. She has constructed a small shed and subsequently this area was included within the limits of BBMP and the BBMP has transferred the Khata in favour of Bylamma in MR 12/2009-10 and also paid tax to the BBMP.

(d) Out of love and affection, the said Bylamma has executed a registered gift deed on 23.09.2011 in favour of Eranna and the same has been registered, and hence the respondent No.3 Eranna has become the lawful owner and in lawful possession, and obtained the Katha Certificate from the BBMP on 09.09.2011 in KTR/245/11-12 dated 09.09.2011 and the Khatha extract has been issued in favour of Eranna;

(e) Smt.Manjula w/o Eranna is the absolute owner and in lawful possession and enjoyment of the site bearing number 449 formed in survey number 25 of Agrahara village and now Agrahara Layout, Yelahanka Hobli, Bengaluru North Taluk. Originally, this site was allotted in favour of Lakshamma in the year 1972 during the celebration of 28th Independence Day i.e. 11.11.1972 and issued the Hakku Patra and handed over possession. By virtue of the Hakku Patra issued by the Government, the said Lakshamma was in lawful possession and enjoyment of the said site and in order to reside there, she has ;put up a small shed and subsequently the site was included in BBMP limits and after that Lakshamma made representation to the BBMP for getting Katha in her favour and the BBMP has transferred the Katha in the name of Lakshamma vide MR 01/2009-10 and she has also paid up-to-date taxes to the BBMP. Subsequently, out of love and affection Lakshamma has executed registered gift deed in favour of Manjula and Manjula became the absolute owner and in lawful possession and enjoyment of the said site and accordingly she got the Kata transferred from BBMP in her name vide KTR/246-11-12 dated 09.09.2011;

(f) The appellants have no right, title, interest muchless the alleged possession in respect of the above sites (site number 449 and 450) in collusion with the BESCO authorities had got obtained the electricity meter in their names in respect of the sites in question. On the basis of the said order before the Hon'ble Civil Courts in the pending suit and immediately after coming to know the said fact, the respondent herein had made representation to the BESCO authority to disconnect the said meter. Based on the legal opinion of BESCO, the AEE has instructed the appellants to produce 'B' Katha and as the 'B' Katha was not produced, the electricity was disconnected to the installations.

7. The AEE at the time of hearing has submitted the parawise reply as follows :

- (a) The installation bearing RR No.YLG 75434 & YLG 75436 serviced in the name of G.J.Gurunath on 23.03.2011 with a sanctioned load of 1 KW each under tariff LT2(A);
- (b) Gurunath has submitted gift deed, BBMP tax paid receipt in the name of Janardhan for the year 2011-12;
- (c) On 26.06.2015 Eranna has submitted an application dated 03.07.2015 stating that Gurunath and Janardhan has submitted fake documents on the said property and obtained the service;
- (d) The complaint lodged by Eranna was intimated to Gurunath and Janardhan vide letter dated 26.06.2015 to submit the house documents and their reply;

- (e) On 23.09.2015 Gurunath and Janardhan have submitted house documents along with their reply dated 23.09.2015;
- (f) The documents filed by Eranna and Gurunath were referred to the legal section for opinion on 01.07.2015;
- (g) After obtaining the legal opinion, the appellants were informed to produce `A` Katha, failing which electricity will be disconnected;
- (h) Since the appellants failed to produce `A` Katha electricity was disconnected;
- (i) The appellants have approached the CGRF and as per the directions of the CGRF, electricity was restored;
- (j) On receipt of the final order of the CGRF, the electricity was again disconnected on 03.06.2016

8. In view of the above facts, the question that arises for consideration is “whether the Orders of the AEE and the CGRF are in order?”

9. Regulation 4.02 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka states thus :

“1. Any person desirous of availing himself of power supply shall comply the following requirements besides other specific requirements detailed elsewhere under these Conditions.

(i) Application for supply of electricity shall be filed with the Distribution Licensee by the owner of occupier of the premises. XXX

(ii) XXX

Attested true copies or Photostat copies of the following documents as applicable shall be enclosed along with the application.

(a) Proof of ownership of the premises or proof of occupancy.

(b) XXX

(c) XXX

(d) XXX

(e) XXX

(f) XXX

(g) XXX "

10. On perusal of the proceedings of AEE, it is seen that, the action to disconnect the power is initiated on the complaint made by Respondent No.3 Eranna who has come on record here in the instant case. Before disconnection of power, the AEE has also obtained the legal opinion and has proceeded. The appellants have failed to produce the required documents to prove the title. Whereas, it is seen that Eranna – Respondent No.3, has filed the Khatha issued by BBMP in his favour and his wife in respect of property No.449 and 450. In respect of the civil suit mentioned by the Appellant it is found that the Respondent No.3 Eranna is not a party. In defence of his claim as owners' of site No.449 and 450, the Respondent No.3 has also produced copies of loan sanction letter issued by Taluk Panchayat office, wherein it is stated that they were given loan during 1981-82 by HUDCO. A copy of Office Memo cancelling the 'B' Khatha in favour of the Appellants is also produced by the Respondent. Copy of the proceedings of the Meeting held on 21.03.2016 under the Chairmanship of Deputy Commissioner, Bengaluru Urban District, is also enclosed along with

the letter dated 15.06.2016 of the Respondent No.3, in which a mention is made about the schedule properties and orders are made to take action against BESCO officials who had given power connection without verifying the documents.

11. All these corroborate to establish the fact that the titles of the scheduled properties are in favour of Respondent No.3 and his wife.

12. Thus the action taken by the AEE and order of the CGRF dated 23.05.2016 appears to be in order. There are no substantive facts and issues found to interfere with the orders of the CGRF. The directions issued vide office letter dated 16.06.2016 is withdrawn. Hence the following Order.

ORDER

The appeal is dismissed.

Sd/-
(B.N. Krishnaiah)
Electricity Ombudsman

To :

1. Sri M.A.Delvi, Advocate, No.8, 3rd Cross, Pottery Town, Bengaluru – 560 046
2. The Assistant Executive Engineer (EI), O & M, C-8 sub-division, BESCO, Sahakar Nagar, 13th Main, 20th Cross, Bengaluru – 560 094.
3. Sri J.C.Kumar & Associates, Advocates, No.F-3, “Krishna Tower’ 1st Floor, 3rd Main, Gandhinagar, Bengaluru – 560 009.
4. The Chairperson, CGRF, Bangalore Urban District, BESCO, West circle, 05, 3rd stage, Bhimajyothi HBCS Layout, Bangalore, next to Chord Hospital, Basaveshwara Nagar, Bangalore-560079.
5. Managing Directors of ESCOMs.

6. PS to Hon. Chairman, KERC
7. PS to Hon. Member (A), KERC
8. PS to Hon. Member (M), KERC
9. PS to Secretary, KERC
