



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Reserved on: 26<sup>th</sup> February, 2024*

*Pronounced on: 24<sup>th</sup> May, 2024*

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**CS(OS) 112/2017**

**M/S JAI HEALTHCARE PVT. LTD.**

Having its registered office at:  
GD-101, Vishaka Enclave,  
Pitampura, Delhi-110034

..... Plaintiff

Through: Mr. Vidit Gupta, Advocate

Versus

**TATA POWER DELHI DISTRIBUTION LTD.**

Formerly known as NDPL  
NDPL House, Hudson Lines,  
Kingsway Camp,  
Delhi-110009.

..... Defendant

Through: Mr. Manish Srivastava, Mr. Moksh  
Arora, Mr. Santosh and Mr. Hardik,  
Advocates

**CORAM:**

**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

**J U D G M E N T**

**NEENA BANSAL KRISHNA, J.**

1. A suit for Mandatory Injunction and Recovery of Damages has been filed on behalf of the plaintiff.
2. Briefly stated, the plaintiff is the owner of the two plot admeasuring 525 sq. yds bearing Municipal No.1-A and 1-B in Block No.19, Shakti



Nagar, Delhi (*hereinafter referred to as suit property*). The plaintiff is also the registered owner of property Municipal Number 2-B, Block No.19, Shakti Nagar, admeasuring 1577.22 sq. yds. The plaintiff in the aforesaid properties had inducted *M/s Legacy Hotels & Infra Projects Ltd.* as tenant vide two lease deeds dated 20.02.2008 for running of a Hotel/Guest House vide two Lease Deeds dated 20.02.2008 on a monthly rent of Rs. 60,000/- excluding service tax, electricity and water charges etc. The possession of the suit property was handed over to the tenant which eventually surrendered the vacant and peaceful possession of the property to the plaintiff on 30.11.2012. The tenant not only cleared all the payments towards rent, but also the security deposit was refunded to the tenant. The electricity connections installed in the suit premises in the name of the tenant were disconnected on 05.12.2012 by the defendant who was earlier known as North Delhi Power Limited (NDPL).

3. **The plaintiff has claimed** that the electricity supply to premises No.19/1-A, B was connection K No.31704113950 C of 80 KW; and to premises No.19/2, Shakti Nagar, Delhi the supply of the electricity was through the K No.31704113950 C of 70 KW. It subsequently came to know that predecessor in interest of defendant had installed a Transformer in the front portion of the suit premises adjoining to the main entrance at the instance of tenant *M/s Legacy Hotels and Infra Projects Ltd.* from where it was getting the electricity for premises No.19/1-A and B.

4. After the premises were vacated by the tenant in the end of 2012, the plaintiff had made repeated requests to the officials of defendant for removing the transformer. Presently, no electricity is being supplied from these transformers to the property of the plaintiff. The defendant had fairly



conceded to remove the Transformer during the course of one of the meetings, but thereafter has failed to remove the transformer on one pretext or the other.

5. Left with no alternative, plaintiff served a Notice dated 06.06.2014 and thereafter filed W.P.(C) No.8098/2014 titled as 'Jai Healthcare Ltd. vs. Tata Power Delhi Distribution Limited' for directing the defendant to remove the transformer from the suit premises. A Counter Affidavit was filed by the defendant, wherein it had admitted the ownership of the plaintiff where the Transformer is installed. The defendant also admitted that the Transformer had been installed without any legal authority, document and no prior consent was obtained before the installation of the transformer. However, a false and frivolous plea was taken that it is facing a financial burden of installation of a transformer for providing electricity to the nearby premises and needs compensation from the plaintiff for removal of the transformer, and to its alternative location at the cost of the plaintiff.

6. It is asserted that the plaintiff is not liable to bear the cost of removal or relocation of the transformer. The forcible continuation of transformer in the premises of the plaintiff had deprived him of use of the premises which he is unable to utilize for lawful purpose and has suffered monetary loss. The suit premises are located on a road which is notified under MPD-21 as 'Mixed Land Use' and various Showrooms of branded Companies are located on the road itself near the circle of Shakti Nagar. The utility value of the suit property is on higher side.

7. The plaintiff has further stated that the total area of the property owned by the plaintiff is approximately 27000 sq. ft. and the prevailing rate of rent is about Rs.40 per sq. ft. Parking is one of the big issue and the



customers in the building may park their vehicles for the purpose of shopping and there is no area in the vicinity where the vehicle can be parked. Moreover, the rent being paid by the Showrooms includes the facility of parking.

8. Therefore, the plaintiff has assessed the user charges @ Rs.10,00,000/- per month. The plaintiff gave a Legal Notice dated 07.11.2016 asking the defendant to pay the user and occupation charges, but the defendant has not given any reply thereby indicating its admission to the assertions of the plaintiff.

9. Hence, the present suit has been filed for Rs. 3,60,00,000/- towards rent use and occupation charges w.e.f 01.03.2014 till 28.02.2017. Mandatory Injunction is also sought for directing the defendants to remove the transformer from the suit premises. Further, *pendent lite* and future damages @ Rs.10,00,000/- per month are claimed by the plaintiff.

10. **The defendant in its Written Statement** has taken the *preliminary objections* that the present suit is barred under *Section 10 CPC* as the plaintiff had admittedly filed W.P.(C) No.8098/2014 on the same cause of action and is actively pursuing the same. The present suit being subsequent in time, is liable to be stayed till the disposal of the Writ Petition. Moreover, the plaintiff is *indulging in Forum shopping* and on this ground itself, the suit is liable to be dismissed. The suit of the plaintiff is also *barred under Order II Rule 2 CPC*. The issues raised in the present suit is barred by principle of *res sub judice*. It is also *barred by limitation* as it is beyond the period of three years from the date of accrual of cause of action which arose in the year 2012. The suit is, therefore, liable to be *rejected under Order VII Rule 11 CPC*. Moreover, *M/s Legacy Hotels and Infra Projects Ltd.* has not



been joined as a party and the suit is *bad for non-joinder of necessary party*.

11. **On merits, the Defendant has contended** that the Transformer had been installed in the suit premises with the consent of *M/s Legacy Hotels and Infra Projects Ltd.* for supply of electricity to it and this was well within the knowledge of the plaintiff. Since as per the Agreement, the defendant was to supply the electricity from the Transformer not only to the tenant in the suit premises but also to the other customers, the complete cost of installation was borne by the defendant, which otherwise was required to be borne by the consumer under Electricity Act, 2003 read with the Regulations framed therein. Therefore, no amount is payable by the defendant towards rent or usage of small piece of land in the corner of the premises, which is not creating hindrance for anyone.

12. The defendant has contended that plaintiff has concealed that it had met the Manager, Civil Lines, sometime in March, 2014 and had consented to bear the cost of shifting of the Transformer, but when asked to make payment of necessary charges towards shifting of the transformer, it failed to do so. Furthermore, there is no explanation forthcoming as to why the plaintiff did not object to the installation of the Transformer in the site premises while it was in the occupation of the tenant. It is further claimed that the Transformer had not been installed illegally but with the proper authorisation. The defence now been set up by the plaintiff is nothing but an afterthought.

13. The defendant has denied that it has earned huge profits from supply of electricity through the Transformer to other consumers. In terms of the DERC (Supply Code and Performance Standards) Regulations, 2017 in the event of connection having more than 100 KW load, it is the responsibility



of the consumer to provide the space for installation of the Transformer/sub-station. Admittedly, the load required to be supplied to the premises of the plaintiff was more than 100 KW and the consumer was under the obligation to provide the land for installation. It is denied that the defendant is forcibly continuing to be in possession of the suit land to the deprivation of the plaintiff. It is denied that the defendant is liable to pay user and occupation charges or damages as claimed by the plaintiff. It is submitted that the suit is without merit and is liable to be dismissed.

14. The plaintiff in its replication has reaffirmed the assertions as contained in the plaint.

15. The **issues** on the pleadings were framed on 03.10.2018 as under :

*(i) Whether the defendant has legally and validly installed 630 KW transformers on the premises of the plaintiff? OPD*

*(ii) If the answer to the above issue is against the defendant, whether the plaintiff is entitled to any damages? If so, how much? OPP*

*(iii) Whether the present suit is barred under Section 10 CPC in view of the pendency of Writ Petition (C) No.8098/2014 filed by the plaintiff? OPD*

*(iv) Whether the suit filed by the plaintiff is barred by limitation? OPD*

*(v) Whether the erstwhile tenant of the plaintiff Legacy Hotel & Infra Projects Ltd. is a necessary and property part? If so its effect? OPD*

*(vi) Relief.*



16. The **additional preliminary issue** was framed on 23.10.2019 as under:

*(i) Whether the suit is not maintainable being without cause of action under Order VII Rule 11 CPC? OPD*

17. The plaintiff in support of its case examined **Mr. Rakesh Gupta**, Manager A/R as **PW1**.

18. The defendant examined **Mr. Sumit Sachdeva** Assistant General Manager, TPDDL (D) as **DW1**.

19. The detailed testimony of the witnesses shall be considered subsequently. My **issue-wise findings** are as under:

**Additional Issue:** *(i) Whether the suit is not maintainable being without cause of action under Order VII Rule 11 CPC? OPD*

20. The defendant had taken a preliminary objection that the plaint does not disclose any cause of action. Further, The defendant submits that the Suit is not maintainable in view of explicit bar under *Section 145 of Electricity Act, 2003* read with Works and Licensee Rules, 2006 that provides that no civil court shall have jurisdiction to entertain a suit in respect of any matter which an Assessing Officer, Appellate Authority or Adjudicating Officer appointed under the Act, is empowered under the act to determine. This Section 145 reads as under:—

*“Section 145 Civil courts not to have jurisdiction: No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an assessing officer referred to in section 126 or an appellate authority referred to in section*



*127 or the adjudicating officer appointed under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.”*

21. The defendant has placed reliance on *Dhulabhai v. State of M.P.* AIR 1969 SC 78; *B.L. Kantroo v. BSES Rajdhani Power Limited 154* (2008) DLT 56; *Kalyani India Private Limited v. Government of NCT of Delhi & Ors.* W.P. (C) No. 718/2020; and *Prashant Mathur v. GNCTD & Ors.* W.P. (C) 12556/2002.

22. However, in *Gurnam Kaur v. BSES Rajdhani Power Limited*, 2018 SCC OnLine Del 7410 a Coordinate Bench of this Court has explicitly rejected the argument of the defendant while observing that if this argument is accepted, it would mean that an entity which has a license to supply electricity in an area without being entitled to any land or property, and without consent from the owner, can by force and as a matter of automatic right fix its works such as Transformers, electricity poles etc. in order to carry out its business of supply of electricity.

23. Further, it is specifically pleaded by the plaintiff that after the tenant, with whose consent the transformer was installed, had vacated the premises, the defendant had no subsisting right to continue with the transformer being installed in the premises of the plaintiff. The plaintiff in addition. To removal of the Transformer, has also sought user/occupation which is not within the domain of the Adjudicating Authority. There is specific cause of action disclosed in the plaint, the suit is maintainable and not liable to be rejected under Order VII Rule 11 CPC.





24. *The issue is decided against the defendant.*

**Issue No.3:** (iii) *Whether the present suit is barred under Section 10 CPC in view of the pendency of Writ Petition (C) No.8098/2014 filed by the plaintiff? OPD*

25. The defendant has taken a specific plea that the suit is barred under Section 10 CPC in view of the pendency of the Writ Petition (C) No.8098/2014 filed by the plaintiff.

26. Admittedly, the plaintiff prior to filing of present suit had filed the aforementioned Writ Petition, wherein the relief of removal of Transformer from its premises had been filed. However, the said Writ Petition has already been disposed of vide Order dated 14.01.2019 by observing that "*the petitioner has already filed the suit for similar relief mentioned above, the present petition is not maintainable*". The scope of the Writ Petition is very different from the Civil Suit. Moreover, the Writ Petition already stands withdrawn. In view of the aforesaid it cannot be said that the suit is barred under Section 10 CPC.

27. *The issue is decided against the defendant.*

**Issue No.4:** (iv) *Whether the suit filed by the plaintiff is barred by limitation? OPD*

28. An objection has been taken on behalf of the defendant that the suit is barred by limitation, since the plaintiff had been agitating for the removal of the Transformer after the premises had been vacated by the tenant in the year 2012. Learned counsel for the defendant in its Written Submissions has



asserted that the cause of action according to the plaint, arose on 30.11.2012 and once the limitation period had commenced, it cannot be stopped by any subsequent event. The admission of the plaintiff that the cause of action first accrued on 30.11.2012 while the present suit had been filed in the year 2017 clearly reflects that it is barred by limitation. Reliance has been placed on Secunderabad Cantonment Board vs. B. Ramachandraiah & Sons (2021) 5 SCC 705, CLP India Private Limited vs. Gujarat Urja Vikas Nigam Limited, Surjeet Singh Sahni vs. State of U.P SLP (Civil No.3008/2022).

29. The defendant has further contended that according to the plaintiff the cause of action had further arisen on 18.11.2013 and 22.01.2014 when the plaintiff had asked the defendant for removal of the Transformer. There is no cogent explanation forthcoming as to why despite there being a denial in November, 2013 and October, 2014 the suit has been filed belatedly on 02.02.2017 i.e. beyond a period of three years. The plaintiff has wrongly claimed that the cause of action has arisen on 02.05.2014 when the request was allegedly made to the defendant. PW1 Sh. Rakesh Kumar Gupta has not even averred these facts in its affidavit of evidence Ex.PW1/A.

30. Learned counsel for the defendant has relied upon P.K. Ramachandran vs. State of Kerala and Anr. AIR 1998 SC 2276, wherein it was held that the law of limitation has to be read strictly. In P.D. Jambekar vs. State of Gujrat, 1973 (3) SCC 524 the Supreme Court has relied upon the decision of Privy Council in Nagendra Nath vs. Suresh Chandra AIR 1932 PC 165, Magbul Ahmed vs. Pratap Narain, AIR 1935 PC 85 to hold that questions of equity and hardship are out of place when interpreting the statute prescribing the period of limitation.

31. Admittedly, the plaintiff has been requesting the defendant for its



removal and had also filed a Writ Petition claiming the same relief in the year 2014. The plaintiff had availed the remedy by way of Writ within the period of three years and the fact remains that during the pendency of the Writ the present suit has been filed on 02.02.2017. The Writ Petition may have got dismissed as not maintainable vide Order dated 14.01.2019, but the time taken in pursuing a legal remedy before an inappropriate forum has to be excluded under S.14 of the Limitation Act, while calculating the period of Limitation. The Suit has been filed within. the period of limitation.

32. Even otherwise, the right of the plaintiff to get the Transformer removed is a continuing cause of action and, therefore, it cannot be said that the present suit is barred by limitation.

33. *The issue is decided against the defendant.*

**Issue No.5:** (v) *Whether the erstwhile tenant of the plaintiff Legacy Hotel & Infra Projects Ltd. is a necessary and property part? If so its effect? OPD*

34. Learned counsel for the defendant has submitted that the plaintiff has deliberately concealed that its tenant *M/S Legacy Hotels & Infra Project Ltd.* was 100% subsidiary of the plaintiff and that the Directors of the plaintiff and the tenant Company were the same. It has also concealed that the management of the plaintiff and the tenant were the same. The registered office of the two Companies is also the same. It is claimed that the plaintiff and its tenant were in fact alter ego of each other. The plaintiff was aware of the installation of the Transformer but has deliberately not made the tenant as a party to avoid the situation of the true facts being discovered by the



defendant. In fact, the plaintiff had given a direct and a clear consent as has been established from the cross-examination of PW1 Sh. Rakesh Kumar Gupta. The plaintiff has intentionally suppressed and mis-represented the true facts which is highly depreciable, as has been held by the Apex Court in the case of Dalip Singh vs. State of UP (2010) 2 SCC 114.

35. The basic plea which has been taken by the defendant is that the instalment of the Transformer though was consented to by the tenant, it was also a deemed consent by the plaintiff, the tenant being 100% subsidiary of the plaintiff and its alter ego. The tenant may have been the 100% subsidiary as reflected from the Memorandum of Association which reflects that the Directors of both the Companies were same and the management was common, but merely being a 100% subsidiary of the plaintiff does not imply that the acts done by the tenant can be attributed to the plaintiff and it be held legally bound by such acts. In the case of Vodafone International Holdings BV vs. Union of India & Anr (2012) 6 SCC 613 the Apex court has observed that the legal relationship between a holding Company and wholly owned subsidiary is that of two distinct legal persons; the holding Company does not own the assets of the subsidiary and the management of business of the subsidiary vests in its Board of Directors.

36. The defendant has taken an objection that the tenant Legacy Hotels & Infra Project Ltd. is a necessary party to the present suit. However, the suit premises where the Transformer has been installed is admittedly owned by the plaintiff. The grievance is of the owner to get the Transformer removed. The tenant had no doubt occupied the premises for a period of about four years, but having left the premises, any intrusion on the property of the plaintiff has to be protected by him, being the owner of the suit premises.



The tenant only had a right of occupation of the property for the period for which it was inducted as a tenant and had no further liability in respect of the suit premises. *The Legacy Hotel & Infra Projects Ltd. is neither a necessary nor a proper party to the present suit.*

37. *Issue is decided against the defendant.*

**Issue No.1:** (i) *Whether the defendant has legally and validly installed 630 KW transformers on the premises of the plaintiff? OPD*

38. **The defendant in its Written Statement** has taken a plea that the Transformer was installed in the suit premises on 25.02.2009 with the consent and permission of the plaintiff. To corroborate this plea, it has been claimed that Shri Rakesh Kumar Gupta Authorized Representative who had submitted the application for installation of the electricity connections on behalf of the tenant Legacy Hotel & Infra Projects Ltd., was in fact the Manager of the plaintiff and it is the plaintiff who had applied for installation of Transformer and had also consented to its installation in the suit premises.

39. The plaintiff on the other hand, has denied that Shri Rakesh Kumar Gupta during the relevant period was employee of the plaintiff. It is asserted that Shri Rakesh Kumar Gupta was employed with Legacy Hotel & Infra Projects Ltd. Shri Rakesh Kumar Gupta appeared as PW1 and his cross-examination he admitted that the tenant Legacy Hotel & Infra Projects Ltd. was a subsidiary Company of the plaintiff. The Memorandum of Association Ex.DW1/3 reflects that the Directors in the plaintiff Company and the Legacy Hotel & Infra Projects Ltd. were the same and the Direction



of the plaintiff Company were having a shareholding of 99.9% in Legacy Hotel & Infra Projects Ltd. Shri Rakesh Kumar Gupta in his testimony was also evasive in his responsiveness. It is, therefore, established on record that Legacy Hotel & Infra Projects Ltd. was a 100% subsidiary of the plaintiff, wherein all the Directors of the two Companies were the same.

40. The second aspect which emerges from the testimony of PW1 Shri Rakesh Kumar Gupta is that he admittedly was in the employment of the plaintiff prior to 2007. As per his response in the cross-examination, he remained in the employment of Legacy Hotel & Infra Projects Ltd. from 2007 till 2010 and thereafter again has been in the employment of the plaintiff Company. When Shri Rakesh Kumar Gupta was asked to produce the documents of his employment with Legacy Hotel & Infra Projects Ltd., he did not produce the same but responded that he had the initial employment letter from the plaintiff Company in 1999 and thereafter on the asking of the plaintiff to join Legacy Hotel & Infra Projects Ltd., he joined the aforesaid Company but did not get any appointment letter. He was also asked to give the details of his PF accounts for the period 1999 to 2007 and from 2007 to 2010 and thereafter till date, but he was evasive and when asked if he could produce them, he again was non-committal.

41. The admissions of PW1 Shri Rakesh Kumar Gupta coupled with not producing the requisite documents proves that Shri Rakesh Kumar Gupta was in the employment of the plaintiff, but for the period 2007 to 2010 had been authorized to also act for and on behalf of Legacy Hotel & Infra Projects Ltd.

42. Admittedly the application for installation of the electricity connections/ Transformer had been made by Shri Rakesh Kumar Gupta and



were also installed on 25.02.2009 in the suit premises. The plaintiff cannot now turn around to say that the Transformer had been installed in the premises without his consent and permission.

43. DW1 Shri Sumit Sachdeva has admitted in his cross-examination that the NOC Ex.DW1/5 for installation of Transformer was provided by Legacy Hotel & Infra Projects Ltd. through email. The consent for providing the space in the property in question was required to be provided by Legacy Hotel & Infra Projects Ltd. which indeed was provided through NOC. The Legacy Hotel & Infra Projects Ltd. though a tenant in the premises of the plaintiff, could not have given the consent in the premises owned by the plaintiff. It is quite apparent that since the Legacy Hotel & Infra Projects Ltd. was the 100% subsidiary of the plaintiff and it was Shri Rakesh Kumar Gupta an employee of the plaintiff who was representing the Legacy Hotel & Infra Projects Ltd., there was a consent given by the plaintiff for the installation of the Transformer. It is also significant to observe that the Connection Service Form and other documents dated 26.11.2008 that were submitted for the installation of the Transformer, also contained the Memorandum and Articles of Association. The MCA Master data of the plaintiff Company which had been filed in the Writ Petition and has been taken on record which also reflects that the Board of Directors of the plaintiff Company and of the tenant were the same and the tenant was having a shareholding of 99.9% in Legacy Hotel & Infra Projects Ltd.

44. The evidence on record, therefore, establishes that the Transformer had been installed with the consent of the plaintiff. Irrespective of the consent of the plaintiff, even if the case of the defendant is accepted that the initial installation was with the consent of the plaintiff, the question which



now arises is whether the defendant has acquired an indefeasible and a right in perpetuity of continuing to have its Transformer installed in the suit premises, even though now the plaintiff is requesting the defendant to remove the same.

45. To determine this aspect, it is pertinent to consider the background in which the Transformer got installed in the suit premises. The Legacy Hotel & Infra Projects Ltd. the subsidiary/tenant of plaintiff was running a hotel from the suit premises and had two electricity connections bearing K No.31704113950 C of 80 KW and K No.31704113950 C of 70 KW each for the supply of electricity to the tenanted premises. Since the supply of electricity to the suit premises was more than 100 KW, the defendant agreed to install the Transformer for supply of electricity to the hotel *M/s Legacy Hotel & Infra Projects Ltd.* It is not denied that during the negotiations, it was agreed that the defendant would install the Transformer at its own cost but with a condition that it would also supply electricity from the said Transformer to the other consumers in the neighbourhood. Consequently, the Transformer of 630 KW got installed.

46. *M/s Legacy Hotel & Infra Projects Ltd.* for whom the electricity of more than 100KW was required, has vacated the premises on 30.11.2012. Thereafter, the plaintiff did not feel the need to seek supply of electricity through the Transformer so installed and approached the defendant for its removal. There is no denial that Shri Rakesh Kumar Gupta had meetings with the officials of NDPL which included visit on 18.11.2013 and 22.11.2014. According to the testimony of Shri Rakesh Kumar Gupta, the defendant fairly conceded to plaintiff's request for removal, but on one pretext or the other have failed to do so.





47. The defendant while not denying its responsibility to remove the Transformer has taken a plea that it had faced huge financial burden in installation of the Transformer and would need compensation for removing of the Transformer and also an alternate site at the cost of the plaintiff, for the purpose.

48. What thus, becomes the moot point is not the removal of the Transformer, but who should bear the cost of the relocation of the Transformer and who should arrange for the alternate site for installation of the Transformer.

49. The defendant has relied on Regulation 24 of the *DERC (Supply Code and Performance Standards) Regulations, 2017* framed under the *Electricity Act, 2003* which provides for the procedure for shifting electric line or electrical plants. It reads as under :

***“24. Procedure for shifting electric line or electrical plant of the Licensee.- (1) The owner of the land or his successor in interest, who has given right of way for the construction of an existing electric line or electrical plant over, under, along, across, in or upon the said land, may apply for shifting the electric line or electrical plant to any other portion of his land for genuine purposes:***

*(2) The application for shifting the electric line or electrical plant shall be submitted to the Licensee.*

*(3) On receipt of the application, the Licensee shall inspect the site and assess the technical feasibility of the proposed shifting.*

*(4) The request for shifting an electric line or electrical plant shall be granted only if:-*

*(i) the proposed shifting is technically feasible. and*

*(ii) the owner of the land or his successor in interest gives consent in writing to shift the electric line or electrical*



*plant to any other portion of his land or to any other land owned by him or any alternate right of way to be arranged by him for shifting the electric line and the electrical plant and*

*(iii) the owner of the land or his successor in interest shall take necessary permission/approval for road cutting or right of way, if required.*

*(iv) the applicant remits the applicable charges required for shifting the electric line or electrical plant.*

*(5) The Licensee shall shift the electric line or electrical plant, if the conditions specified in sub-regulation (4) are complied with by the applicant.*

*(6) In case of shifting of meter or service line within the premises of the consumer, the procedure specified in the Regulation 25 shall apply.”*

50. The bare perusal of this Regulation makes it evident that it would be applicable only when the Licensee or successor in interest, wants his electric line to be transferred from one portion to any other portion of "his land".

51. This is not the present case as the transformer was that of the defendant for supply of electricity to the consumers in the vicinity including the suit premises. It was not a case of providing an electric line purely for the benefit of the suit premises. Pertinently while the requirement of the hotel while it was being run from the suit premises was about 150 KW, the transformer had the capacity of 630KW , as it was also used for the supply of electricity to other consumers. The defendant had taken the permission from the plaintiff for installation of the transformer and now once it is withdrawn they have to necessarily make an arrangement for alternate site. The plaintiff cannot be burdened with the task of arranging an alternate site,



purely for the business of the defendant which is its own responsibility. More so, there is no such Regulation placing the liability on the plaintiff to either pay the charges for removal of the Transformer or to provide the alternate site for its installation.

52. Admittedly, the defendant has been supplying electricity to this transformer not only to the premises of the plaintiff, but also to the other consumers in the neighbourhood and thereby utilizing a facility without making any payment. The defendant has not entered into any license Agreement with the plaintiff for continuation of the Transformer in its premises. Rather, it has become a situation where permission once granted by the plaintiff is being construed as a permission in perpetuity and an additional liability is being imposed on the plaintiff to arrange for an alternate site when there is no such requirement under law. It is the defendant who is in the business of supply of electricity and creation of wherewith all and infrastructure is of the defendant and not on the individual consumers. Tomorrow, it can be very well envisioned that the defendant, may start insisting on the right of installation in the property of any consumer which may be convenient for them, but that they cannot do under the law. The adamant insistence of the defendant for arrangement of alternate site by the plaintiff, is not tenable.

53. Further, it is admitted that the plaintiff is not drawing the electricity from this Transformer, despite which it has been burdened with letting the Transformer of the defendant, continuing to exist in its premises.

54. The defence of the defendant that the Transformer is occupying a small space of 173.36 sq. ft. and is installed on one side, which does not hamper the utility of the property, is again completely fallacious as it is a



known fact that installation of an electricity transformer brings with it the hazards and the responsibility of its maintenance to ensure that it does not catch fire and it has an imminent potential of being a potent source of danger to the property. The condition of providing an alternate site for Transformer, is unsustainable under the law as well as equity.

55. The *other condition* on which the defendant has been insisting is that it has incurred huge financial burden in the installation of the Transformer and thus, *the cost of removal of Transformer should be borne by the plaintiff.*

56. The defendant has admittedly been supplying electricity in the neighbourhood and making a profit while the plaintiff is not drawing electricity from this Transformer. The defendant has been making a huge profit without paying anything to the plaintiff for using its premises for the Transformer. The plaintiff is neither deriving any benefit by way of supply of electricity nor is it getting any charges for part of its premises being used for the Transformer by the defendant. The cost of installation of the Transformer by the defendant had been borne initially for its own profit and benefit for getting the land free from the plaintiff for installation of the Transformer. Having utilized it since 2009, it cannot now insist for the cost of removal of the Transformer to be borne by the plaintiff.

57. It is, therefore, established that defendant has no right to continue have its Transformer installed in the premises of the plaintiff. It is, therefore, held that the defendant is liable to remove the Transformer forthwith at its own cost and expense by arranging an alternate site for which the plaintiff cannot be in any manner held responsible.

58. In Gurnam Kaur (supra) and Gurnam Kaur (Deceased) Through LRs



*v. BSES Rajdhani Power Ltd.* Ex Appl. (OS) 420/2017 in Ex. P. 146/2016 wherein in similar situation, the electricity provider had resisted the claim for removal of transformer on the ground of undue hardship to the loads of customers to whom the supply of electricity would be disrupted if the transformer is removed and also that it has no other space to shift or relocate the transformer and that it would be unable to meet its universal service obligation to the customers at large in case the transformer is directed to be removed. The Coordinate Bench rejected all these contentions had held that and held that the Defendant/electricity provider had no right of any kind to squat on the private property of any person thereby depriving the said person from beneficial use and enjoyment of said property. It was also observed in this case that merely because defendant has a license to supply electricity in the area does not confer on it any automatic unfettered right to fix its transformers etc. merely for its own business of supply of electricity. The Transformers installed in the private premises, are liable to be removed by the Electricity provider and the State Agency is obligated to make alternate site available for installation of the Transformer, hoisted in the personal property of the plaintiff. The Transformer was thus, directed to be removed.

59. The issue is thus, decided in favour of the plaintiff.

**Issue No.2: (ii) *If the answer to the above issue is against the defendant, whether the plaintiff is entitled to any damages? If so, how much? OPP***

60. The plaintiff has claimed damages for illegal use and occupation of the part of the premises of the plaintiff by the defendant by installation of the Transformer. The defendant in his Written Submission asserts that



plaintiff is not entitled to damages as he has failed to take steps to mitigate the loss. The defendant places reliance on Murlidhar Chiranjilal v. Harishchandra Dwarkadas AIR 1962 SC 366 and M. Nanjappa v. M.P. Muthuswamy AIR 1975 Kant 146.

61. As already held, the minute the permission was withdrawn by the plaintiff, the defendant was under the obligation to remove the Transformer. The negotiations have taken place between the parties between 2012 to 2014 and thereafter, the Writ Petition got filed in the year 2014. The plaintiff by filing the Writ Petition gave a Notice to the defendant for removal of the Transformer and thus, it has become entitled to claim damages since 2014. It would not be out of place to mention here that this suit came to be filed on 02.03.2017 during the pendency of the Writ Petition which was eventually withdrawn on 14.01.2019 on account of the institution of the suit. The defendant is therefore, held to be liable to pay the user and occupation charges/ damages since the date of filing of Writ i.e. 03.11.2014.

62. The next aspect which requires determination is the quantum of the damages payable to the plaintiff. PW1 Sh. Rakesh Kumar Gupta in his testimony, has deposed that the total area of the properties of the plaintiff, is about 27000 sq. ft and the prevailing rate of rent was Rs.40/- per sq. ft and thus, the user charges payable by the defendant was Rs.10 lakhs per month.

63. The Transformer had been installed in an area measuring 173.36 sq. ft. As per the calculation of user and occupation charges for the area on which the Transformer was installed, it comes to Rs.6934.4/- i.e. about Rs.7,000/- per month. The plaintiff's assertion that it is entitled to Rs.10 lakhs per month is a calculation based for entire premises which is totally not acceptable. The defendant can be made liable only for such land that



was in its occupation and not for the entire property. It is also pertinent to observe that the area where the Transformer was installed was at the corner of the property and did not impact or interfere in the user of the entire remaining property for which reason it cannot be held liable for damages for the entire property.

64. While holding that the user and occupation charges payable to the plaintiff are of Rs. 7,000/- per month w.e.f 01.03.2014. However, it cannot be overlooked that the rates of the property have not been static since 2014 and have escalated. As has been held by this Court in the case of New India Assurance Co. Ltd. v. M. Gulab Singh & Sons P. Ltd. 2018 SCC OnLine Del 6787, considering that the user is of commercial nature, it can reasonably be held that the plaintiff is entitled to an enhancement by 10% on the monthly rent every year till the date of payment. The plaintiff shall also be liable to pay interest @ 6% per annum on the due amount.

65. It is also directed that the defendant is liable to remove the Transformer at its own cost by arranging *an alternate site within six months from the date of pronouncement of this judgment.* It is a Transformer of 630 KW and the prevailing rate of electricity is Rs.8/- per KVA. Considering the supply of electricity through this Transformer, in case the defendant fails to remove the Transformer in the given time, it shall become liable to pay the damages @ Rs.5 lakhs per month till the removal of the Transformer.

66. *The issue is accordingly decided in favour of the plaintiff.*

### **Relief**

67. In view of the findings on the issues, it is hereby held that the defendant is liable to remove the Transformer at its own cost by arranging an alternate site, within six months from the date of pronouncement of this



judgment. The plaintiff is held entitled to user and occupation charges/damages in the sum of Rs. 7,000/- per month w.e.f 01.03.2014 with an enhancement by 10% on the monthly rent every year till the removal of Transformer within six months of this judgement. The plaintiff shall also be liable to pay interest @ 6% per annum on the due amount.

68. In case the defendant fails to remove the transformer within six months, the damages at the cost of Rs.5 lakhs per month shall become payable by the defendant to the plaintiff, till the Transformer is removed.

69. The suit is accordingly decreed with costs.

70. Decree Sheet be prepared accordingly.

**(NEENA BANSAL KRISHNA)**  
**JUDGE**

**MAY 24, 2024**

*Va*