

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

An application for Writ of  
Mandamus .

Citialert Security (Pvt.) Ltd,  
No.27, Jethawana Road,  
Colombo-14.

**C.A. Application No. 32/2008 (Writ)**

**PETITIONER**

Vs.

1. Ananda Kosala Eleperuma,  
No.27, Jethawana Road,  
Colombo-14.
2. Ceylon Electricity Board,  
Sir Chittampalam A. Gardiner  
Mawatha, Colombo-02.
3. Mrs. P.H.D. Zoysa,  
Area Engineer,  
Ceylon Electricity Board,  
(Colombo North Office)  
74/5, 1/1, Grandpass Road,  
Colombo-14.

**RESPONDENTS**

**BEFORE:**                    **Anil Gooneratne J. &**  
**Deepali Wijesundera, J .**

**COUNSEL:**                    Romesh de Silva P.C., with Sugath Caldera for the Petitioner  
  
S. Thalagasingham with Chandrika Morawaka for the 1<sup>st</sup>  
Respondents.  
  
Faiz Musthapa PC with A. Panditharatne for the 2<sup>nd</sup> and 3<sup>rd</sup>  
Respondents.

**ARGUED ON:**                29.05.2013

**JUDGEMNT ON:**            04.07.2013

**Anil Gooneratne, J.**

The Petitioner Co. has been running a firm of Security service, and seeks a Writ of Mandamus as prayed for in sub para (a) of the prayer to the petition directing the respondent to supply electricity to the part of premises No. 27, Jethawana Road, Colombo-14. The premises as described in the 2nd schedule to the petition is occupied by the petitioner. The prayer 'a' refers to as the respondent. However by sub para 'b' it is evident that relief is more particularly sought against the Ceylon Electricity Board the 2<sup>nd</sup> respondent. It is pleaded that the 1<sup>st</sup> respondent let to the petitioner and the petitioner took on rent the premises in dispute. The details of payment of telephone bills, tax receipts, EPF payments etc are contained in paragraphs 4 and 5 of the petition.

The submissions of learned President's counsel Mr. Romesh de Silva for the petitioner demonstrates that at a certain point of time there were disputes between the petitioner tenant and the 1<sup>st</sup> respondent landlord. It was submitted that part of the ground floor at 27, Jethawana Road is not separately assessed and electricity connection to premises No. 27 above has been supplied at the request of the 1<sup>st</sup> respondent. Petitioner's electricity connection as pleaded had been obtained through the connection given to the premises as requested by the 1<sup>st</sup> respondent. It is also pleaded that no electricity bills were sent but the petitioner as shown in X16 to X25 paid money to the 1<sup>st</sup> respondent for consumption of electricity (receipt of T/S deposits) There is also reference to a District Court case (RE 9046) where the petitioner instituted action against the 1<sup>st</sup> respondent. Certain terms of settlement marked X12 to X14 are produced to prove that the 1<sup>st</sup> respondent agreed not to discontinue electricity and water supply. It is also stated that it was found that the 1<sup>st</sup> respondent had illegally supplied electricity to tenants and the Electricity Board disconnected electricity and fined the 1<sup>st</sup> respondent a sum of Rs. 621,924/- (1<sup>st</sup> respondent paid the fine and obtained electricity)

It is also the case of the petitioner that the petitioner obtained a mandatory injunction directing the 2<sup>nd</sup> respondent to grant electricity in case No. 20875/L (X15). However the Mandatory injunction was dissolved on 16.01.2008. (vide para 20 of the petition) The petitioner attempts to demonstrate by X31 (15.02.2006) that the petitioner applied for electricity supply from the CEB, but it was not granted. In order to understand the case of the petitioner and petitioner's application to obtain a writ of Mandamus, the following averments in the petition are reproduced for purposes of clarity.

The petitioner further pleads that the Electricity Board has duly and properly and in accordance with the law supplied electricity to the said premises from 19<sup>th</sup> April 2006 to December 2007.

In the circumstances the petitioner pleads that ;

- a) The petitioner has been in occupation of the said part of the premises from 1994 up to date;
- b) The electricity is essential for the business of the petitioner and/or for the occupation of the premises;
- c) The said part occupied by the petitioner is separately rewired and is rewired independently of the rest of the premises;
- d) There is a separate meter to gauge the supply of electricity to the said part of the premises;
- e) Electricity can be supplied directly by the 2<sup>nd</sup> respondent to the part of the premises occupied by the petitioner;
- f) The petitioner has requested for a supply of electricity to the part of the said premises.

In any event and without prejudice to aforesaid from on or about 19<sup>th</sup> April 2006 the 2<sup>nd</sup> respondent has been supplying electricity to the said part of the premises occupied by the petitioner.

The learned counsel for the 1<sup>st</sup> respondent objects to any relief being granted to the petitioner mainly on the basis that the petitioner is in illegal occupation of the premises

in dispute. The learned President's counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> respondent emphasizes the fact that the Petitioner has to be treated as a trespasser by the approach to judicial pronouncements, in other cases made as regards the subject matter of this case, and that prima facie facts establish illegal occupancy of the petitioner. However to a question posed by this Court as to whether any loss has been caused to the 2<sup>nd</sup> respondent, the learned President's counsel answer was in the negative.

We have considered the case of each party. No doubt it is manifest from the available material that there is a dispute on tenancy. It also transpired in the course of argument that a rent and ejection case is pending in the District Court of Colombo. Whatever it may be what we could gather from oral submissions and the pleadings is that whenever a Court grants a mandatory injunction electricity connection is granted to the petitioner. Moment the Court dissolved the injunction the 2<sup>nd</sup> respondent discontinued same. It cannot be the function of a statutory authority to act in such a rash manner even if the authority is bound to supply or discontinue electricity in terms of a Court orders. The purpose for which electricity is sought cannot be the criteria under the law to grant or refuse electricity connection to a consumer. The purpose for which electricity is supplied is no basis, to refuse to provide the facility. Electricity is an utility item, and essential to any persons livelihood. The preamble to the Electricity Act and the Ceylon Electricity Board Act both contemplate to regulate the generation, transmission, transformer meters, distributions supply and use of electrical energy and the later statute inter alia provide for the establishment of an Electricity Board for the Development and

coordination of the generation, supply and distribution of electrical energy. Within the parameters of the above statutes the legislature has not denied its use to a consumer.

The term 'Consumer' is defined under the Electricity Act as follows.

"Consumer" means any person or body of persons supplied or entitled to be supplied with energy by a licensee or the Board, or whose premises are for the time being connected for the purposes of supply of energy with the works of a licensee or the Board"

Section 33(1) of the Electricity Act provides for supply for private purposes, and recognizes both the owner and occupier. The said section reads thus; 33(1) A licensee shall, upon being required to do so by the owner or occupier of any premises situated within one hundred and fifty feet from any distributing main of the licensee in which he is for the time being required to maintain or is maintaining a supply of energy for the purposes of general supply to private consumers, give and continue to give a supply of energy to those premises in accordance with the provisions of this Act and the regulations made thereunder and he shall furnish and lay any service lines that may be necessary for the purpose of supplying the maximum power which may be required by such owner or occupier.

We have also perused the interim order issued by this Court. Subsequent to the issue of the said order the Supreme Court had on 11.03.2008 granted Special Leave to Appeal and the main basis is on the footing whether the Court of Appeal erred in refusing interim relief on the ground that the petitioner was a mere occupier. We have had the benefit of

perusing the following authorities where a licensee is bound to supply electricity to a consumer.

***Aleckman Vs Kochchikade Town Council 1982 (2) SLR 487*** ; The plaintiff-appellant was resident in the Kochchikade Town Council area and the defendant Town Council supplied electricity to the plaintiff. On 20.09.72 the defendant terminated the supply to the plaintiff-appellant on the ground that the premises to which the electricity was supplied was not owned by the plaintiff and that the building was not in conformity with the Housing and Town Improvement Ordinance.

The defendant Council argued that in terms of section 218(2) the appellant could not maintain this action as action was not filed within the six month period. The plaintiff argued that the defendant was in fact acting under the provisions of the Electricity Act and that there is no time limit under the Electricity Act.

Held- That the defendant was a licensee under the Electricity Act and that this action arose out of defendant's alleged failure of duties and obligations cast upon it by the Electricity Act and hence the time limit imposed by the Town Councils Ordinance does not apply. At pg. 491; In ***Negombo Municipal Council Vs J. Fernando (1)*** H.N.G. Fernando, J as he then was, stated, " But for the license granted to the Council under the Act, the Council would have no right to supply electricity and would indeed be committing an offence in so doing. The fact that a Municipal Council is empowered by the 1947 Ordinance to supply electricity and to enter into contracts for the purpose is of no avail, since those powers cannot now be exercised save in conformity with the Electricity Act,

which is a later special enactment governing the supply of electricity. The “ scheme” of the Act, as I have held, is that a licensee is bound to supply electricity in accordance with conditions laid down by the legislature itself or else prescribed by regulations made under the Act; and just as the mode and condition of supply are comprehensively controlled by the Act, so also is the relationship between the licensee and the consumer similarly controlled.”

Then in another case regarding the supply of electrical energy. ***Gunaratne & Another Vs CEB 1991 (1) SLR 239***; 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.

***Corea Vs Urban Council Kotte ( 1958) 62 NLR 60*** Mandamus issued on the local body and it's Chairman directing them to give and continue to give a supply of electrical energy to the Petitioners premises.

Courts have also gone to the extent of awarding damages, where a licensee refuse to provide electricity.

***Municipal Council of Badulla Vs Ratnayake ( 1978-79) 2 SLR 141,146-149***. In his case the defendant local authority, when sued for damages for failure to supply electricity in breach of its statutory duty, took up the position, inter alia, that the purpose for which the



supply was sought was to carry on a trade, to carry on which would be unlawful in the circumstances. At pp.146-147 it was held that " The purpose for which the supply ( of electricity) is asked for is totally irrelevant to the consideration as to whether the defendant ( local authority) was under a duty under ( the Electricity Act, s.33(1) ) to give the supply. The supply of electric energy is to the premises and not for a purpose." Damages were awarded for the refusal to carry out the statutory duty of supplying electricity to the plaintiff in this action.

This Court having considered all the facts and circumstances is firmly of the view that the 2<sup>nd</sup> respondent is bound to supply electricity to the Petitioner so long as the petitioner continues in occupation of the premises in dispute. Petitioner is an occupier within the meaning of the Electricity Act, and entitled to the remedy prayed for in this application. We allow a Writ of Mandamus in terms of sub para (a) of the prayer to the petition.

Application allowed.

  
JUDGE OF THE COURT OF APPEAL

Deepali Wijesundera, J

I agree.

  
JUDGE OF THE COURT OF APPEAL

Kpm/-