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

\+ LPA 114/2024 & CM APPL.8345-47/2024, 4608-09/2025

DELHI DEVELOPMENT AUTHORITY .....Appellant

Through: Mr. Sanjay Katyal, Standing Counsel with Mr. Gaganmeet Singh Sachdeva, Ms. Ritika Bansal, Advocates.

versus

RAHEJA DEVELOPERS LIMITED & ANR .....Respondents

Through: Mr. Rajshekhar Rao, Sr. Advocate with Ms. Manjeet Kaur, Mr. Gurtejpal Singh, Mr. Rohan Anand, Ms.Aashna Arora, Ms. V. Gupta, Advocates for R-1

Mr. Sandeep Sethi, Sr. Adv. with Mr. Anupam Varma, Mr. Nikhil Sharma, Ms. S. Akshata, Advocates for R-2.

Date of Decision: 25th April, 2025

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGEMENT

TUSHAR RAO GEDELA, J : (ORAL)

CM APPL. 8347/2024

1. Having heard learned counsel representing the parties and perused the averments made in the instant application, the application is allowed and delay of 70 days in filing the appeal is condoned.

2. The application stands disposed of.

LPA 114/2024, CM APPL. 8345/2024, CM APPL. 8346/2024, CM APPL. 4608/2025 & CM APPL. 4609/2025

3. The present Letters Patent Appeal has been filed assailing the judgement dated 10.10.2023 passed by the learned Single Judge in writ petition bearing W.P.(C) 773/2016 titled *Raheja Developers Limited vs. Delhi Development Authority & Anr.,* whereby the appellant/respondent no.1 was directed to pay the outstanding dues of Rs.9,13,45,471.81 less Rs.2 crores, to respondent no.2/BSES Yamuna Power Limited (BYPL), on account of electricity charges consumed at the Transit Camp, Anand Parbat.

4. The appellant took an initiative for in-situ development of Kathputli Colony near Shadipur Depot, Delhi to provide proper housing facilities to slum dwellers at Kathputli Colony, the work for which was awarded to respondent no.1/Raheja Developers Pvt. Ltd. *vide* Development Agreement dated 04.09.2009 in a Public-Private Partnership (PPP) mode. In terms of the aforesaid agreement, the respondent no.1 was obliged to construct 2800 multi-storied in-situ houses for slum dwellers of the Kathputli Colony with specified covered area and specifications as well as construction of a Transit Camp for the temporary occupation of the slums dwellers of Kathputli Colony, during the process of re-development of the colony, in lieu whereof, the respondent no.1 was allowed to construct and sell 170 'high category' houses on commercial terms.

5. On 24.01.2013, the appellant and the respondent no.2/BSES entered into an agreement for providing electricity connections at the Transit Camp, Anand Parbat. It is pertinent to note that the electricity was sanctioned in the name of the appellant/DDA. The electricity

connections to the occupants/dwellers were to be offered by the respondent no.2/BYPL as prepaid meters.

6. Pursuant to these agreements, the Transit Camp was constructed by respondent no.1 and were offered for occupation and in fact occupied by the Kathputli Colony dwellers.

7. In the interregnum, on account of non-payment of electricity dues, a statutory notice dated 20.12.2015 for disconnection of electricity supply under Section 56(1) of the Electricity Act, 2003 was issued by respondent no.2 to the appellant. The said copy of the notice also enclosed an Electricity Bill dated 04.01.2016 raised on the appellant which stated the outstanding amount to be Rs.96,05,150/- and the due date of payment to be 20.01.2016. A copy of the said letter dated 20.12.2015 and the Electricity Bill dated 04.01.2016 was forwarded to respondent no.1 by the appellant *vide* letter dated 13.01.2016, demanding that respondent no.1 pay the outstanding amount to respondent no.2/BYPL.

8. Aggrieved thereof, the respondent no.1 filed the underlying writ petition. *Vide* impugned order dated 10.10.2023, learned Single Judge while noting that the Agreement dated 24.01.2013 categorically shows that it is the appellant who is the consumer of the electricity and responsible for making the payments as per the Agreement dated 24.01.2013, directed the appellant to make the payment of the outstanding amount of Rs.9,13,45,471.81/- less Rs.2 crores, which had become due and payable by that time, to respondent no.2/BYPL.

9. Liberty was also granted to the appellant to avail of all its legal rights to recover the due amounts from respondent no.1, if so available, in accordance with law, as well as if due and payable under the terms of the

order dated 02.02.2016. Further, respondent no.2 was directed to ensure that the individual electricity meters are activated immediately consequent whereto, with effect from 10.11.2023, it would be the individual occupiers who shall be responsible for making the payment of the electricity consumed by them, and the electricity consumed for the common areas shall be borne and paid by the appellant.

10. Mr. Sanjay Katiyal, learned counsel for the appellant at the outset adumbrates briefly the background of the case and submits that the impugned judgement casts an unnecessary burden upon the appellant to pay for the electricity dues occasioned on account of the electricity consumed by the occupants of Transit Camp, Anand Parbat.

11. Learned counsel next refers to the development agreement executed by the appellant with the respondent no. 1, particularly to Clause 4.1 & 4.2 which are as under:-

> *"4.1 It will be the responsibility of the developer to construct all the internal roads, lay the services and operate and maintain them till such time that these are taken over by Local authorities.*
>
> *4.2 Site of electric sub-station as required by the concerned agency will have to be provided within the site. Construction of electric sub-station or any payment to be made in this regard to the concerned agency will be the responsibility of the Developer."*

12. While referring to the aforesaid clauses, Mr. Katiyal, learned counsel states that though respondent no.1 has completed the project as envisaged in the aforesaid clauses, he contends that an obligation is cast upon the respondent no.1 to pay the electricity charges for the consumption by the erstwhile dwellers of the Kathputli Colony. He also submits that this obligation is not of the appellant but the individual occupants of the Transit Camp, Anand Parbat. In order to make good the said submission, he invites

attention to the order dated 02.02.2016 passed by the learned Single Judge in the underlying writ petition, by virtue whereof the appellant/DDA and the respondent no.1 therein i.e. Raheja Developers Ltd. were directed to deposit Rs.33 lakhs each with respondent no.2/BYPL, subject whereof respondent no.2 was prohibited from disconnecting the electricity connections. Learned counsel also invited attention particularly to para 6 by virtue whereof learned Single Judge had directed respondent no.1 therein i.e. DDA to complete all formalities to activate the prepaid connections in the concerned area whereafter respondent no.2 therein i.e. BYPL was directed to activate the prepaid connections within four weeks thereafter. Till such activation of the prepaid connections, the respondent no. 1/Raheja Developers Ltd. and the appellant/DDA were to continue to pay one third of the bill amount without prejudice to their rights and contentions.

13. Learned council contends that merely because the electric connection is in the name of the appellant, though not being a consumer of such electricity, it cannot be burdened with payment of outstanding dues in regard to the Transit Camp. He states that since the burden of maintaining the Transit Camp is squarely upon the respondent no.1 in terms of Clause 4.1 of the Development Agreement, it is the respondent no.1 alone which is liable to pay the outstanding amounts and not the appellant. He vociferously argues that the failure on the part of the respondent no.2/BYPL to activate the prepaid connections of the occupants of the Transit Camp in terms of the order dated 02.02.2016 is writ large and therefore, the respondent no.2 cannot derive any benefit or advantage of its own wrong. Learned counsel contends that keeping in view the aforesaid arrangements and since respondent no.2/BYPL has failed to activate the

prepaid connections, respondent no.1 ought to share the burden of one third payment at least, as an alternative. In such circumstances, he prays that the directions passed by the learned Single Judge in the impugned judgment dated 10.10.2023 be set aside.

14. *Per contra,* Mr. Rajshekhar Rao, learned senior counsel appearing for respondent no.1/Raheja Developers, at the outset submits that the Developer Agreement entered into and executed between the appellant and respondent no.1 did not have any term or covenant prescribing or stipulating or mandating payment of electricity charges for the Transit Camp on account of consumption by the occupants who were hithertobefore the dwellers of the Kathputli Colony. Drawing attention to Clause 4.1 and 4.2 of the Developer Agreement, he states that even in those clauses, there is no prescription for such payment. He stoutly denies the stand of the appellant and argues that there being no clause mandating respondent no.1 to pay for the electricity consumed by the occupants of Transit Camp, there cannot be any liability fastened upon respondent no.1.

15. Learned senior counsel stoutly defends the right of respondent no.1 to approach this Court under Article 226 of the Constitution of India on the premise that there being no contractual obligation in the nature of clause mandating respondent no.1 to pay for the electricity consumed by the occupants, the demand by the appellant from respondent no.1 to defray such charges is absolutely illegal and violation of its rights. That apart, he vociferously urges that the whole issue respecting the electricity connection; the consumption thereof; and the liability to pay for such consumption is a subject matter exclusively between the appellant and the respondent no.2/BYPL and lies within the domain of the

agreement/document executed between those two entities. According to him, respondent no.1 is a complete stranger who has been unnecessarily dragged into this imbroglio.

16. He submits that the obligation to maintain the Transit Camp as per the Agreement is being continued without any breach and states that the learned Single Judge has rightly passed the impugned judgement extricating respondent no.1 from a demand which is, *ex facie,* illegal, untenable and contrary to law.

17. Mr. Sandeep Sethi, learned senior counsel appearing for respondent no.2/BYPL submits that its obligation to supply electricity to the Transit Camp stemmed from the Agreement dated 24.01.2013 executed between the appellant and respondent no.2. He states that as admitted by the appellant itself, the electric connection at the said Camp was sanctioned in the name of the appellant/DDA. As such, it would be the appellant alone which would be directly liable to pay for the electricity consumed by the occupants of the Transit Camp and thus, the direction by the learned Single Judge is in conformity to the general law and the Agreement dated 24.01.2013 so executed in regard to providing electric connections at the Transit Camp. He joins the submission of Mr. Rao, in that, the obligation to pay for the electricity consumed would only be that of the consumer, in this case, the appellant.

18. He further states that respondent no.2 is in a piquant situation, in that, on the one hand, it is obligated in law to supply electricity and yet, on the other, is unable to receive huge outstanding dues from the admitted consumer. To compound that, respondent no.2 cannot disconnect the electricity connections else, it would be dragged to the Courts by hundreds

of occupants and face unnecessary litigations for no fault. He fairly admits that as per the directions in the order dated 02.02.2016, the burden to complete individual prepaid connections to each of the occupants of the Transit Camp was fastened upon respondent no.2, yet, despite having held numerous camps, only few occupants showed interest. According to him, ostensibly so, none of the occupants were interested lest they would have to pay for the electricity consumed. He states that in such situation, the appellant has no choice but to pay for the electricity consumed by the occupants of the Camp.

19. We have heard the submissions of the learned counsel for the parties and remain unconvinced by the submissions on behalf of the appellant.

20. From the submissions, we find that it is the undeniable case of the parties that the appellant/DDA drew up a Scheme where the slum dwellers of Kathputli Colony were to be rehabilitated and in the interregnum, were to be housed in the Transit Camp having better housing and upgraded living conditions with electricity connections, *et al*. The appellant appears to have, in order to further the Scheme, entered into a Development Agreement with respondent no.1 wherein in lieu of constructing 2800 houses for the dwellers of Kathputli Colony, the appellant granted the rights to respondent no.1 to construct 170 'high category' flats which it could further dispose off. The respondent no.1 was required to draw out a comprehensive Layout Plan, comprising houses, open spaces, parks, internal roads, lay the services and operate and maintain them till such time the houses were taken over by local authority. Providing suitable site for installation of Electric Sub-Station and construction of the same or any payment to be made in that regard to the concerned agency was the

responsibility of respondent no.1. The construction of underground tanks for domestic water supply, horticulture works and fire fighting as required was to be planned and constructed by respondent no.1 apart from other covenants. However, the Development Agreement appears to be conspicuous by the absence of any clause providing or stipulating or even mandating respondent no.1 to make any payment on account of consumption of electricity supplied by respondent no.2/BYPL consumed by the occupants of the Transit Camp. Learned counsel for the appellant was unable to point to any such clause or covenant or any other Circular, instruction or understanding. Thus, *prima facie*, there appears to be no clause mandating respondent no.1 to pay for the consumption of electricity provided by respondent no.2/BYPL and consumed by the occupants of the Transit Camp. In such circumstances, we have no hesitation in inferring that at least respondent no.1 cannot be fastened or saddled with the liability to pay for the demands raised by respondent no.2 upon the appellant.

21. That apart, undoubtedly, the appellant is the registered consumer of electricity with respondent no.2. There appears to be an Agreement executed between the appellant and respondent no.2 and undeniably, respondent no.1 is a stranger to the said Agreement and the transaction itself. Given the undeniable background too, it appears that respondent no.1 may not be liable for payment of electricity dues on account of consumption by the occupants of Transit Camp who are the dwellers of Kathputli Colony.

22. The appellant appears to have floated a welfare scheme to alleviate the pathetic living conditions of the slum dwellers of the said colony and in furtherance of the same, entered into various agreements and transaction

with respondent no.1 for a particular purpose and with respondent no.2 for the purposes of supply of electricity. Though the submission of learned counsel for the appellant regarding the appellant providing its name as the consumer of electricity at the first instance at the time of commencement of the whole project may have been fortuitous what with respondent no.2 being under an obligation to register individual occupants as prepaid consumers, yet, the charges of such supply and consumption of electricity by the occupants cannot be mulcted upon respondent no.1 to say the least. It is manifest that the issue or dispute is clearly within the domain of appellant and the respondent no.2. Thus on this count too, respondent no.1 remains insulated to that extent. We are not commenting on any other issue which may or has arisen between appellant and respondent no.1 and limiting our opinion only to the electricity charges/outstanding dues of respondent no.2 arising on account of consumption of electricity by the occupants of the Transit Camp who are the slum dwellers of Kathputli Colony.

23. The reliance of appellant upon the interim order dated 02.02.2016 regarding temporary arrangement for distribution of 1/3rd payment of electricity charges of the Transit Camp between appellant and respondent no.1 to urge or beseech that the same arrangement be continued even now, is misplaced. It is trite that once a final judgement is passed, all interim orders are subsumed within the same. Thus, today, it is the directions contained in the impugned judgement alone that are to be examined and considered. Moreover, consequent to the above analysis, no such directions can either be countenanced or passed.

24. We find that the learned Single Judge has rightly relied upon Clause

15(a) of the Agreement dated 24.01.2013 executed between the appellant and respondent no.2 to conclude that the ultimate responsibility to pay the charges is upon the appellant. Moreover, we also take note of the fact that the appellant is discharging its public duty and cannot shirk away from its responsibility or pass it on to respondent no.1 which is a stranger to this transaction.

25. Learned Single Judge has given a slew of directions from para 24 onwards till para 28 which are reiterated by us too.

26. In view of the above, we do not find any merit in the present appeal which stands dismissed, alongwith the pending applications.

TUSHAR RAO GEDELA, J

DEVENDRA KUMAR UPADHYAYA, CJ

APRIL 25, 2025/*rl*