

THE STATE ELECTRICITY OMBUDSMAN  
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**APPEAL PETITION NO. P/271/2012.**

(Present: T.P. Vivekanandan)

Appellant : Sri. D. Mohanan Nair.  
Mohanavilasam, (Umarappallil)  
Anakottoor P.O  
Kottarakkara, Kollam Dt.

Respondent : The Assistant Executive Engineer.  
Electrical Sub Division, KSEBoard,  
Kottarakkara.

**ORDER.**

**Background of the Case: -**

This Appeal Petition has been preferred by Sri. D. Mohanan Nair, Mohanavilasom, Kottarakkara, against the order dated 30.12.2011 in OP No.678/2011 passed by the CGRF, Kottarakkara, in the matter of changing of ownership of the electric connection, Consumer No. 19683, under Electrical Section, Kottarakkara. The gist of the complaint is that the appellant's brother Sri. Madhavan Kutty Nair obtained the Electric service connection to building No. NP-VI/462/B in Neduvathoor Grama Panchyath, by producing false document to the KSEB authorities, regarding the ownership of the house, actually owned by the appellant. The appellant had requested for change of ownership of the existing Electric connection to his name which was rejected by the respondent. The appellant then filed a Petition before the CGRF, Kottarakkara and the same was disposed as closed stating to remain status quo in the matter of service connection to the disputed premises and the opposite party will be at liberty to regularize the service connection subject to the outcome of the civil dispute that is going on. Aggrieved by this Order, the appellant has filed the Appeal Petition before this Authority.

**Arguments of the Appellant: -**

The arguments advanced by the appellant in his petition are the following;

1).The brother of the complainant fraudulently obtained the Electricity connection (consumer no: 19683) in building no: VI/462 B which belongs in the name of the complainant as per Revenue and Village records. The complainant informed the matter to Assistant Engineer, Kottarakkara vide his letter dated 04.03.2003 and submitted copy of Ownership Certificate issued by the Special Grade Secretary, Naduvathoor Grama Panchayath and requested to transfer the ownership of electricity connection to his name. That request was rejected by the concerned official without any valid reason.

Hence the complainant filed a complaint before the CGRF Kottarakkara. But the CGRF issued order to maintain status quo and he is aggrieved by the same.

The appellant states that he submitted copy of his title deed by which he obtained the property in which the house in question is situated, along with ownership certificates issued by the concerned Panchayath and the certificate issued by the village officer, to the Assistant Executive Engineer with the application for change of consumer's ownership. By those documents it is categorically proved that the property and the building is owned and legally possessed by appellant. He argues that as per rules, with out his consent, the electric connection cannot be given to anyone else, but here the appellant's brother Sri. Madhavan kutty Nair, had obtained the electric connection, concealing the facts, playing fraud on the authorities.

The information given in writing to the Assistant Engineer concerned by Mr. Madhavan kutty, is not at all acceptable and sufficient for getting electric connection. It has come in evidence that the ownership certificates obtained by him is by playing fraud, suppressing facts, which was corrected subsequently by the concerned Panchayath, as is evident from the ownership certificate issued in his favour. The suit pending before the civil court has no relevance with regard to the matter in question. The question to be considered is whether Sri. Madhavankutty Nair, obtained the documents by misrepresentation by playing fraud on the authorities. He may be directed to submit the documents produced along with application for obtaining ownership certificates etc.

A person having illegal occupation of a building has no right to obtain electric connection and Sri. Madhavankutty Nair obtained the ownership certificates illegally and so his consent is not necessary for change of ownership of the connection. At any cost the KSEB has no right to continue the connection illegally obtained. Therefore, the Assistant Executive Engineer concerned shall be responsible to change the cosnumership or to disconnect the same.

In the argument note filed by the counsel for the appellant it is stated that the appellant's brother has constructed the building and then took the electric connection without his client's knowledge and suppressing facts. The KSEB has rejected his clients request for transfer of ownership citing the pendency od court case, but the Panchayath has changed the same ownership of building in his client's name during the same period. The KSEB is not a party in the Civil court case that is going on. Therefore it is prayed to change the ownership of the disputed electric connection in the name of his client, Sri. Mohanan Nair.

Argumenst of the Respondent: -

The respondent has submitted the statement of facts opposing the contentions raised by the appellant. It states as follows;

Sri.Mohanan Nair, Mohana vilasam, Anakottoor vide his letter dated 04.07.2011, has informed the Assistant Engineer, Electrical Section, Kottarakkara that he is the owner of the building (NP-VI/462B) and submitted copy of ownership certificate dated 20.06.2011 issued by the Special Grade Secretary, Neduvathoor Grama Panchayath and requested to transfer the ownership of Electricity Connection to his name.

Sri.D.Madhavakutty Nair informed in writing dated 28.09.2011 that building was built by him and he is the real owner of the building and not to proceed with any transfer of ownership of the electric connection. He also intimated that a suit (O.S. No.522/2010) regarding the ownership is pending before the Munsiff Court, Kottarakkara. He had also submitted a copy of the Residential Certificate (dated 03.01.2003) and a copy of the ration card, in support of his claim.

Based on above documents, the Assistant Engineer, Electrical Section, Kottarakkara vide his letter dated 07.11.2011, informed the complainant that the ownership cannot be transferred without the consent of the existing consumer. The Complainant also not paid the required fees along with his application for transfer of ownership.

Further to the complaint filed by the petitioner, it is ordered by the CGRF (South) vide O.P.No.678/2011 vide order dated 30.12.2011, to maintain status quo in the matter of the service connection to the disputed premise. It is stated that the petitioner will be at the liberty to regularize the disputed connection subject to the outcome of the civil dispute.

KSEBoard has no objection in dismantling or transferring the electric connection to the petitioner, if he keeps the formalities, as and when the dispute is cleared by him. Hence KSEB is not responsible or liable for any loss and consequences suffered by the petitioner.

Analysis and Findings: -

The Hearing of the Case was conducted on 27.07.2012 and 30.10.2012 in my chamber at Edappally, and Mr. Arun V R, learned Advocate for the appellant and Sri. D. Mohanan Nair, the appellant and Sri. Lalson, Assistant Exe. Engineer, Electrical Sub Division, Kottarakkara, represented the Appellant's and the Respondent's side respectively. On examining the Appeal Petition and the argument notes filed by the Counsel for the Appellant, the statement of facts of the Respondent, perusing all the documents and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions thereof.

During the first day of hearing the case, the respondent was asked to file the ownership certificate issued by the Secretary, Neduvathoor Grama Panchyath, while taking the new electric connection and the notices issued to the present occupier and its reply. During the next Hearing done on 30.10.2012, both have produced the required documents for verification. Later the counsel of the appellant has also submitted an argument notes in the matter.

It is noted that the respondent has acted on the, application for transfer of ownership of the Electric connection, by issuing a notice to the opposite party, intimating the request for transfer of ownership of the electric connection, for the reason of taking the connection by misrepresentation under the provision of Reg. 21 (7) (e) of KSEB Terms and Conditions of Supply, 2005. In reply, to the notice dated 19.9.2012 of the Asst. Exe. Engineer, ESD, Kottarakkara, Smt. Indira M Nair, W/o Sri.

Madhavan Kutty Nair, has stated that the building was built by her husband and he is the owner of the building and further requested not to proceed with any transfer of ownership of the said electric connection, till the disposal of the Civil Suit OS 527/2010 lying before the Munsiff court, Kottarakkara, is decided. Hence, it is certain that there is a dispute pending in the Civil Court, regarding the ownership of the building, in between the appellant and the present occupier. But, as of now there exists no order of any Hon Court restricting the transfer of ownership of the said electric connection to the legitimate owner of the building, based on the 'ownership certificate' issued by the local Panchayath.

The Electric connection was seen registered in favor of Sri. Madhavan kutty Nair on 4/3/2003, upon him filing the application for a new connection with necessary document such as ownership certificate issued by the Neduvathoor Grama Panchayath, in his name. Normally a further verification of a proper certificate issued by a Public Authority is not done, unless there arises some suspicion or an objection is received, against the application for new connection. Here, the appellant has raised the dispute of 'ownership of the Electric connection' only on 4.7.2011 i.e. after a gap of nine years. The appellant has produced the ownership certificate dated 20/6/2011, issued by the Secretary, Neduvathoor Grama Panchayath, to the effect that he is the owner. The appellant has not adduced any valid reason for the delay of 9 years occurred in submitting his claim earlier. Now, the appellant's claim is that the building is actually owned and legally possessed by him and hence the existing electric connection should be got transferred in his name. Then the question that naturally arises is; *Whether an unauthorized connection got either by malpractice or by misrepresentation, which tantamount to unauthorized use of electricity, for the past several years, confers any right to the user to retain the same in his name?*

The Regulation 21(8) of KSEB T & C of Supply regarding the detection of Electric connection obtained by malpractice/misrepresentation reads as follows:

*"If it is found on inspection by the APTS or any Special Squad constituted for the purpose or any other officer of the Board not below the rank of Asst. Engineer that a service connection of a consumer has been obtained by malpractice/ misrepresentation as envisaged in Clause 21 (7) above, the service connection thus obtained shall be disconnected after giving 24 hours Notice to the party who obtained the connection. The notice will be served to the person who obtained the connection or to any other person available in the premises. In the absence of any person to receive the notice or if the person (s) present refuse to accept the notice, the same may pasted in some conspicuous place near the meter*

*board and the same shall be treated as valid service of notice for the purpose of the Regulation. The supply will be restored only after all formalities as required by the Board in respect of the service connection in question are complied with.*

Hence as per the above rule, an unauthorized connection got by malpractice/ misrepresentation should be got disconnected. A prolonged use of such an electric connection for the past few years does not confer any right for further continuous use by the same person unless it is regularized.

The KSEB states that the original electric connection (Consumer No.19683 of Electrical Section, Kottarakkara), was given as per the ownership certificate issued by the Panchayath Secretary only. Now the Panchayath authorities itself have corrected and changed the ownership of the house in their records and has accordingly issued the new ownership certificate in favor of the appellant. As per the available records before me, no Court of Law has issued any order restraining the said Order of the Panchayath dated 8.6.2011, which shows the real owner is the appellant himself and not Sri. Madhavan Kutty Nair. It is the duty of the respondent to move against an unauthorized electric connection and disconnect it or regularize it, as per rules. In such a situation, I am of the opinion that the Electric service connection shall be changed in the name of its real owner and get it regularized.

As per rules, the tenant or occupier of a building is eligible to take electric connection in his name and enjoy electric power, by executing an Indemnity bond in Stamp paper, indemnifying KSEB from all further liabilities, even if the real owner of the building objects to provide the Electricity in cases of disputes between the owner and the occupier. Here also it is seen that the present Case is only a part of a larger dispute of occupancy/ownership of the said Building, going on in between the appellant and his brother, which can be decided only through a Civil Court's ruling.

**DECISION: -**

From the analysis done and conclusions and findings arrived at, which are detailed above, I am inclined to take the following decision as follows;

The Secretary, Neduvathoor Grama Panchayath, by its Proceedings No. A4-3265/11 dated 8.6. 2011, has issued an order cancelling the ownership of the Building No. 6/462B, in the name of Sri. Madhavan kutty Nair and assigning the same in the name of the appellant, Sri. Mohanan Nair. Hence it is established that the disputed electric connection, Consumer No 19683, under Electrical section Kottarakkara, provided to the said building in the year 2003, was obtained by misrepresenting to KSEB that he is the real owner, and therefore tantamount to an unauthorized one under Clause 21 of

the KSEB T & C of Supply 2005. Since no 'stay' or any restriction is ordered by any Hon Court of Law against the said Proceedings of Panchayath or any matter related to this case and brought to my attention by either side, or able to gather from the letter dated 22.9.2012 of Smt. Indira M Nair, W/o present occupier, I am of the opinion that the request of the appellant is reasonable and has to be complied with by the respondent. The respondent may take action, to change the ownership of the said electric connection in favor of the appellant, observing the existing rules.

However, in this case, the same Electric service connection is understood to be enjoyed by the present occupier, at least for the past 9 years and as such his/her right to consume electric power cannot be denied by this Order. Hence this Forum also directs the Respondent that the electric supply to the said building shall be retained as long as, the power is consumed by the present occupier in the building and the electricity charges for the same are being paid in time, till the Civil Suits lying before the Hon Civil Court, like OS 527/2010 (before the Munsiff Court, Kottarakkara) or any other related Cases, are pronounced and may take appropriate action accordingly.

Having concluded and decided as above, it is ordered accordingly. The Appeal Petition filed by the appellant is disposed of with the said decision. No order on costs.

Dated the 28<sup>th</sup> of February, 2013,

Electricity Ombudsman

Ref. No. P/ 271/2012/1598/ Dated 28.02.2013.

Forwarded to

- 1). Sri. D. Mohanan Nair.  
Mohanavilasam, (Ummarapallil)  
Anakkottoor P.O, (Via) Kottarakkara, Kollam Dt.
- 2). The Assistant Executive Engineer.  
Electrical Sub Division, KSEBoard,  
KOTTARAKKARA.

Copy to

- (1). The Secretary, Kerala State Electricity Regulatory Commission,  
KPFC Bhavanam, Vellayambalam,  
Thiruvananthapuram-10.
- (2). The Secretary, KSEBoard,  
Vydyuthibhavanam, Pattom,  
Thiruvananthapuram-4.
- (3). The Chairperson, Consumer Grievance Redressal Forum,  
KSEBoard, Vydyuthibhavanam, Kottarakkara.