

**THE STATE ELECTRICITY OMBUDSMAN**

Pallikkavil Building, Mamangalam-Anchumana Temple Road  
Opp: Kochi Corporation Regional Office, Edappally, Kochi-682 024  
[www.keralaeo.org](http://www.keralaeo.org) Ph: 0484 2346488, Mob: 91 9567414885  
Email:ombudsman.electricity@gmail.com

---

**APPEAL PETITION NO: P /254 /2011.**

(Present: T P Vivekanandan)

Appellant : Smt. Radha,  
Kalarickal Madom,  
Eroor Road, Manakalpady Road,  
Irumpanam, Ernakulam-682 309.

Respondent : The Assistant Executive Engineer.  
Electrical Sub Division, KSEBoard,  
Cherthala, Alappuzha (Dt).

**ORDER.**

**Background of the Case: -**

Sri. K V Janardhanan Potti, is the registered owner of the consumer No. 8510, under Electrical Section, Thanner mukkom. This connection is now seen located in an unnumbered building owned by Smt. Radha Gopalakrishnan, who is the daughter of Sri.Janardhanan Potti, and now the legal heir of the said property. Earlier, Sri.JanardhananPotti had submitted an application on 4/12/2010, before the Assistant Engineer, Thanneermukkom, for dismantling the electric connection and remitted the required application fee. The building has been functioning as a textile shop for the last few years and the actual occupier of the textile shop and user of the electric connection is the one who presently runs the shop and not the registered consumer. The present consumer is paying the current charges regularly and no dues are pending. The Respondent has informed the complainant that the request for dismantling could not be implemented without the concurrence of the occupier of the premises who is the present user of electricity. The appellant approached the CGRF on 24/8/2011 seeking to dismantle the unauthorized connection availed in her unnumbered building. The Forum, in its order, held that this service has been used by the present occupier for the last 13 years and as such the occupant's right to consume electrical power can not be denied. Further it is also passed orders that the dismantling of the disputed service connection shall be kept pending till the judgment is delivered in the Suit filed i.e. OS No. 105/2011 before the Munsiff Court, Cherthala, filed by the occupier. Aggrieved by the decision of CGRF issued vide Order No.CGRF-CR/Comp.36/2011-12 dated 18/11/2011, the appellant has submitted the Appeal petition.

Arguments of the appellant: -

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

The appellant is the daughter of Sri.JanardananPotti, Jaya Nivas, Thanneermukkom, Cherthala, now residing at Kalarickal Madom, Manakkapady, Eroor Road, Irumpanam P.O. The Appellant and her sister Smt. Jayalakshmi are the real owners and are in possession of properties in Resurvey No: 151/10/1 in Thanneermukkom North villiage, which is having an extent of 8.91 Are and the building there in. The true copy of the Land tax Receipt of the said property in BL 27 Resurvey No: 151/10/1 in Thanneermukkom North Villiage is marked as annexure A1. There is a building having two shutters on the said property. The appellant obtained the said property from her father through settlement deed no: 1201/2008 executed by her father. The said building was constructed without complying with the provisions of section 220 (b) of the Kerala Panchayath Raj Act and hence the same was not numbered by the Thanneermukkom Grama Panchayath. The appellant obtained the said property through deed and effected mutation and are enjoying the same.

The complainant's father, who is aged 96 years, had been living in the house situated in the said property along with his aged wife. The appellant and her sister being the sole children of them and being settled at Ernakulum and her sister at Vijayawada, they were not in a position to stay in the said house along with her parents. Exploiting the said situation, some people in the locality induced father to sign certain blank papers in the pretext of getting electric connection for agricultural purpose and forged the same as if some documents of tenancy and even agreement of sale of shop rooms owned by him. In one such incident, one person Mr. Sivadasan Nair who induced the said JanardananPotti to sign certain blank stamp papers, fabricated the same as if a rent agreement in favor of his wife and started to illegally occupy the two shutter building mentioned above and started to run a textile shop in the name and style of 'Avinash Textiles '. Subsequently, the appellant became the owner of the said property, including the said building and she has not agreed to or entered into any agreement with the said Sri Sivadasan Nair or anybody else for any tenancy or rent.

The appellant realized that the building tax of the building was not being paid to the Panchayath since it was not numbered and the appellant submitted an application before the Panchayath for the same and also to legalize the same. But the Panchayath issued a notice dated 30.06.2011 stating that the said building cannot be numbered as it has been constructed in contravention of the provision under section 220 (b) of the Kerala Panchayath Raj Act, 1994 and directed her to demolish the said building. The true copy of the notice issued to the appellant/complainant no:D-2542/2010 dated 30.06.2011 is marked. Admittedly, the said building has been constructed without complying with the mandatory distance with the notified public tar road on the southern side of the said building. It is expedient that the said building be numbered. The appellant are ready to demolish the unauthorized construction. But, despite the appellant intimating illegal occupant that the building needs to be demolished as the same is unauthorized, he is not cooperating. Thereafter the appellant preferred WP (C) 2636/2011 before the Hon High Court. Meanwhile, the illegal occupant filed O.S.105/2011 before the Munciff Court, Cherthala, against the appellant. The Hon High Court passed final judgment

on 25.03.2011 directing the Secretary of Thanneermukkom Grama Panchayath to dispose the application filed by the complainant for demolishing the unauthorized building after hearing the parties and after considering all the evidences.

Pursuant to the said judgment, the secretary of Thanneermukkaom Grama Panchayath conducted a detailed hearing on 25.06.2011 and passed the order finding that the building has been constructed in violation of Sec. 220 (b) of the Kerala Panchayath Raj Act and directed us to demolish the same within 15 days of the receipt of the said notice and warning of coercive steps against under section 235 (w) (2) (3) (4) of the Kerala Panchayath Raj Act. But since the illegal occupants threatened to obstruct the demolition of the scheduled building by the appellant and threatened to endanger the lives of appellant and family, they filed WP (C) 18358/ 2011 before the Hon High Court seeking Police protection where it was directed that the question of occupancy is to be decided in appropriate civil proceedings and we were given right to bring to the notice of the Munsiff Court.

While so, it was revealed that the electricity connection given to her father (K.V.Janardanan Potti) was originally was for another room of him, vide consumer no: 8510, but was illegally shifted by the illegal occupant to the above said unauthorized constructed building where he is conducting the Textile shop through his wife and is using electricity there from. The said act is illegal on various scores.

- a).No electricity connection can be given to any building without a building number.
- b).No electricity supply can be given to any unauthorized construction.
- c).Continuing electric supply to a person who is fraudulently using a connection which was shifted by him from the actual premises without any authorization from the authorities is illegal and the same amounts to theft of electricity.
- d).Liability arising out of such illegal connection will cause liability to the appellant vicariously.

Up on the said grounds, the appellant filed a complaint before the CGRF, Ernakulum, praying for dismantling the unauthorized electric connection which is at present given to the unauthorized building constructed in her property and her sister Smt. Jayalakshmi. The Respondents contented that the electricity charges were being paid by the present illegal occupier; they also assumed the role of a guardian of the illegal occupant stating that such occupier would get hardships if the connection is dismantled. Quite surprisingly, the Forum called for explanation from the illegal occupant; apparently making the proceedings irregular and against the mandates of Law. Such illegal occupant stated that the said connection was there before she occupied the building. The learned Forum admittedly found that the service connection has been unauthorisely shifted to another building in the same premise. It also found that the matter is to be investigated by the Respondent to maintain their integrity. The Forum also found that the electric connection which was unauthorisely shifted to an unauthorized building should be dismantled. But, the Forum against the law and the relevant statues, directed that such unauthorized connection shall be kept pending till the verdict in O.S.105/2011, filed before the Munsiff Court, Cherthala and that the liability that may arise out of such unauthorized connection shall be borne by the illegal occupant. The impugned order dated 18.11.2011 in CGRF-CR/Comp.36/ 2011-12 issued to the appellant/complainant is marked. The said

impugned order is perverse, arbitrary and is liable to be set aside. The impugned order is liable to be set aside for the following grounds.

- 1). There is no enabling provision which provides for continuing an illegal electric connection.
- 2). The subject matter was purely misunderstood by the Forum. The question as to the eviction of the illegal occupier which is the subject matter of O.S.105/2011 has no relevancy at all with the present subject matter which is regarding dismantling of an illegal and unauthorized electric connection. The Respondent has undoubtedly done and is also doing mala fide acts to supply electricity to the illegal occupant. The enthusiasm of the Respondent in safeguarding the illegal electric connection is the manifestation of the same.
- 3). Having already found that the impugned connection is an unauthorized one and that an investigation is warranted in the matter, the learned Forum grossly erred in not directing to dismantle the said connection.
- 4). The Forum grossly erred in giving benefits to the wrong doer, the illegal occupant. The person in whose name the electric connection has been given also had filed an application before the Forum and a common order has been passed in the same.
- 5). The Forum went wrong in holding that the unauthorized electric connection shall be retained. It is not that the KSEB gets the payments of electricity bills, but that whether illegal electric connection is being continued, that matters.

It is brought to this Hon authority's notice that the said proceedings are relating to the question of illegal occupancy in the room which is an unauthorized construction. The same has no relevance with the subject matter of these proceedings. The subject matter herein is regarding the illegal electric connection that is given to an unnumbered and unauthorisely constructed building. It has not come in evidence that, the owner of the room has not applied for, nor has any intention to have such an electric connection. The statutory liabilities arising out of the said connection lies on the appellant, who have no nexus or interest in such illegal electric connection.

- 6). No injunction order has been passed in OS.105/2011 against the appellant, though it was sought for.

Arguments of the Respondent: -

The Respondent has filed the statement of facts against the averments raised in the Appeal petition. The main contentions of the Respondent are the following.

The electric connection, mentioned in the complaint, is registered under Electrical Section, Thanneermukkom and effected as consumer No. 8510 to the building owned by Sri. Janardhanan Potti, Jaya Nivas, Maruthorvattom P.O., Cherthala. As per the office records, the registered consumer of the said connection is Sri. Janardhanan Potti. A copy of the ownership certificate issued by the Secretary, Thanneermukkom Panchayath is submitted along with the documents for taking the electric service connection and is marked.

The Asst. Engineer, Thanneermukkom, has reported that no notice from the concerned Panchayath for dismantling the said service connection has been received till date. In these circumstances KSEB is not responsible in this matter.

But an application was received from Sri. K.V. Janardhanan Potti, registered consumer No. 8510 on 4/12/2010, for dismantling his electric connection for the purpose of demolishing the building owned by him due to deterioration. The Asst. Engineer collected the application fee and directed the concerned overseer to inspect the premises and take action. As per the report of the overseer, the building has been running as a textile shop for the last 13 years and still it is used for the said purpose by the occupier i.e. the present consumer and occupier of the textile shop. Subsequently the occupier submitted a request on 9/12/2010 before the AE, to retain the electric supply and also stated that the request for dismantling the said electric connection is placed without his concurrence and he is not a defaulted consumer of KSEB and therefore the dismantling of said electric connection will adversely affect his normal life. The Respondent had sent a letter to the complainant showing the difficulties for dismantling the above electric connection.

Later a letter was received by the AE, Thanneermukkom, from the Chief Vigilance Officer, KSEB, Tvpm, in connection with the above matter on 3/1/2011 and a reply was sent showing the facts in this regard on 26/2/2011.

Analysis and Findings: -

The Hearing of the Case was conducted on 29.6.2012 and 13.12.2012 in my chamber at Edappally, and Smt. Radha, the appellant herself appeared for her side and Sri. Unnikrishnan V.R., Assistant Exe. Engineer, Electrical Sub Division, Cherthala and Sri.P.R.Sathyaraj, Asst. Engineer, Electrical Section, Thanneermukkom, represented for the Respondent's side. On examining the Petition and argument notes filed by 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.

The main complaint raised by the appellant in her appeal petition is that the electric connection with consumer No.8510 provided to building No.VIII/384A and owned by Sri. Janardhanan Potti, was shifted illegally to the unauthorized building having no building number, by the present occupier of the building. The Respondent has also admitted that the electric connection is unauthorized as the Panchayath has not assigned building number and it is probable that the service connection might have been unauthorisely shifted to this new building in the same premise some years back but with out their knowledge.

As the building was constructed (where the disputed connection No. 8510 is existing) in violation of Section 220 (b) of the Kerala Panchayat Raj Act, 1994, and a notice was issued by the Panchayath for its demolition, the appellant got ready to demolish the said building. Consequently, as per the order in WP(C) 2636/2011 of the Hon High Court, the Secretary, Thanneermukom Grama Panchayath, after conducting hearings, issued orders to demolish the building. Against this, the present occupier filed a Civil Suit in the Munsiff Court, Cherthala and the same is pending for decision. The appellant had approached the Hon High Court again by filing WP(C) No.18358/2011, for protection in order to demolish the unauthorized building. The Hon Court in its judgment dated 12/7/2011, took the stand that the demolition of the unauthorized building shall be subject to the decision in OS No. 105/2011, pending before Civil Court.

While being so, the consumer approached KSEB office to dismantle the connection as it was an unauthorized one. Upon failing to get it done, the appellant approached the CGRF with a prayer for dismantling the unauthorized electric connection given to the building. The Forum held that *'the electric connection which was unauthorisely shifted to an unauthorized building should be dismantled. But in this case this unauthorized service is understood to be used by the present occupier for the past 13 years and more and as such her right to consume electric power cannot be denied'*.

The Appellant raised various contentions disputing the arguments of the Respondent and the decision taken by the CGRF in this regard. The legal contentions raised by the Appellant during the Hearing conducted on 29/6/2012 are the following:

1).No electricity connection can be given to any building without a building number and no electricity supply can be given to any unauthorized construction. 2). No usage of electricity is allowable for premises or areas other than those for which the supply of electricity was authorized, 3). The Liability arising out of such illegal connection ultimately will cause liability to the appellant vicariously. 4). The building no.384/A (present No. 651/A) is having consumer No. 11176 of Thanneermukkom Section and so the consumer No. 8510 was shifted unauthorisely from the building No 384 A is evident.

The Respondent has not furnished any satisfactory explanation to the above contentions. Here the question that arises is whether the unauthorized use of electricity for the past several years confers any right to the user to consume the electricity without the sanction of the Licensee?

As per the rules prevailing, a prolonged use of an unauthorized connection confers no right for further continuous use by the same person. The Unauthorized use of electricity is chargeable under Section 126 of Indian Electricity Act, 2003.

Further, 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.*

During the hearing conducted on 29/6/2012, the Respondent admitted that the connection given to consumer No. 8510 is an unauthorized one, since it was existing in a unauthorisely constructed building having no Building No:. Considering the above facts, this Forum asked the Respondent why the steps as contemplated under regulation 21 of KSEB T & C of Supply 2005, was not taken against the offender and if not, why it should not be initiated now by issuing a notice? Accordingly, a notice was served by the Assistant Engineer, Thaneermukkom to Smt. Ambika, the present Occupier of the

premise and she replied vide letter dated 15/9/2012. Meanwhile, Smt Ambika also approached the Hon High Court against the Notice issued by the Asst. Engineer on 6/9/2012.

As per the verdict of the Hon Court, the writ petition is allowed and Ext. P7 (Notice dated 6/9/12 of AE) was quashed. It is also held that "However it is made clear that if any ultimate decision is taken by any competent civil court or by the 4<sup>th</sup> Respondent Grama Panchayath, either with respect to eviction of the petitioner or with respect to demolition of the building the existence of the electric connection will not stand in the way of implementing such decisions. It is also made clear that the above judgment will not stand in the way of the 5<sup>th</sup> Respondent pursuing the appeal alleged to have been filed before the Ombudsman".

But to the surprise of this Forum, it is seen that the AE has issued the notice (in Malayalam) to consumer No. 8510, which is translated as follows; ".....The State Electricity Ombudsman has directed the KSEB to initiate steps to disconnect the power supply to the said building...." The implied meaning of the AE's notice was that this Forum has directed the AE to disconnect the power supply after giving notice. But actually, the enquiry of this Forum was why the Respondent did not take any steps when there was specific rules in the KSEB T & C of supply to deal such cases, even after knowing from the Secretary, Grama Panchayath, that the connection to the building has been obtained by malpractice/misrepresentation, obtained on an unauthorisely built building with no Building number. Further, the Forum asked, why the steps as per rules could not be initiated now. But the Respondent or the AE, may be by misunderstanding, issued a notice for disconnection of supply to the occupier of the shop, stating '...the Electricity Ombudsman has directed...to disconnect the power supply..'.

The KSEB agrees that the original electric connection No 8510, surely might have been given to an authorized Building only and have been shifted to the adjacent building at a later date. But KSEB says that they have no knowledge or records of shifting and expressed total ignorance about it. But I feel, it is difficult to shift electric connection from one building to another without the help of KSEB staff.

It is clear that the Grama Panchayath had declared the disputed building as an unauthorisely built one and hence has not been numbered so far. Normally, permanent electric service connections are provided to buildings built observing rules and has been numbered by the Local Bodies, except for construction purpose. Hence it is established that the electric connection (Consumer No.8510), now existing in the Textile shop building, may be obtained to the said building by way of shifting from the near by building or by any means, is an unauthorized one. As per Regulation 21 of KSEB T&C of Supply 2005, such connections obtained by malpractice/misrepresentation are to be treated as unauthorized ones and hence need to be dismantled. There is no point in the argument of the respondent that the Panchayath has not asked for disconnecting the supply. It is the duty of the respondent to move against an unauthorized electric connection, as per rules, for which no specific direction from the Panchayath is required.

But the present dispute is only a part of a larger dispute of rent/occupancy/ ownership of the said Building, going on between the parties, which can be decided through a Civil Court only. The CGRF's order states that the dismantling of the disputed service connection shall be kept pending till the verdict in OS No.105/2011 before the Munsiff Court, is pronounced. The Division Bench of the Hon

High Court in WP(C) No 18358/2011, in the order dated 12.7.2011, has also viewed that since the issue is pending before a Civil Court, it has to be adjudicated by the competent court only.

In the WP(C) 21825 of 2012, dated 1.11.2012, the Hon High Court has ordered that '...It is evident from Ext P3 & P6 that this Court as well as the CGRF had taken the consistent stand that the matter need be decided by the competent civil court...However it is made clear that if any ultimate decision is taken by any Civil Court or by the 4<sup>th</sup> Respondent Grama Panchayath either with respect to eviction of the petitioner or with respect to the demolition of the building, existence of electric connection will not stand in the way of implementing such decisions'. Further, the Hon Court allowed Electricity Ombudsman to pursue the Appeal Petition filed. Hence the following decision is ordered.

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;

It is established that the disputed electric connection, Consumer No 8510, is an unauthorized one that needs to be disconnected and dismantled ultimately under Clause 21 of the KSEB T & C of Supply 2005. However, in the special circumstance stated above, this Forum can only order to follow the Judgment issued in WP(C) 21825 of 2012, dated 1.11.2012, by the Hon High Court, and accordingly direct the Respondent to take appropriate action as per the decision, once the same is ordered by the Civil Court or by the Grama Panchayath, as the case may be.

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/ 254/2011/ 1597/Dated 28.02.2013.

Forwarded to

1. Smt. Radha,  
KalarickalMadom,  
Eroor Road, Manakalpady Road,  
Irumpanam, Ernakulam-682 309.
2. The Assistant Executive Engineer,  
Electrical Sub Division, KSEBoard,  
Cherthala, Alappuzha (Dt).

Copy to: -

- 1). The Secretary, Kerala State Electricity Regulatory Commission,  
KPFChavanam, Vellayambalam, Thiruvananthapuram-10.
- 2). The Secretary, KSEB,  
VydhyuthiBhavanam, Pattom, Thiruvananthapuram - 4.
- 3). The Chairperson, CGRF,  
KSEB, Power House Buildings, Ernakulum, Cochin -18.