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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE M.A.ABDUL HAKHIM

FRIDAY, THE 4TH DAY OF APRIL 2025 / 14TH CHAITHRA, 1947

RSA NO. 131 OF 2024

AGAINST THE JUDGMENT&DECREE DATED 31.10.2023 IN AS NO.24 OF 2022 OF SUB COURT, PERUMBAVOOR ARISING OUT OF THE JUDGMENT&DECREE DATED 25.01.2022 IN OS NO.222 OF 2016 OF MUNSIFF COURT, PERUMBAVOOR

APPELLANT/APPELLANTS/DEFENDANTS 2 AND 3:

1 KERALA STATE ELECTRICITY BOARD
REPRESENTED BY SECRETARY. VAIDHUTHY BHAVAN,
THIRUVANANTHAPURAM, PIN - 695004

2 ASSISTANT EXECUTIVE ENGINEER
KERALA STATE ELECTRICITY BOARD, PERUMBAVOOR DIVISION,
PERUMBAVOOR, ERNAKULAM., PIN - 683542

BY ADVS.
ARUNKUMAR A., SC, KSEB
Nirmal S

RESPONDENTS/RESPONDENTS/PLAINTIFF & DEFENDANTS 1 AND 4:

1 GOPALAKRISHNAN
AGED 76 YEARS
S/O SUBRAHMANIA AYYAR, SHANMUGHAVILASAM HOUSE, PERUMBAVOOR KARA, PERUMBAVOOR VILLAGE, KUNNATHUNAD TALUK, PIN - 683542

2 R.VARADARAJAN
AGED 66 YEARS
S/O. RAMANADHAN, KRISHNAVILAS MADED, PERUMBAVOOR KARA, PERUMBAVOOR VILLAGE, KUNNATHUNAD TALUK, ERNAKULAM, PIN - 683542

3 N.V.HARIS
S/O.MAKKI, BUSTHAN HOUSE, PERUMBAVOOR KARA, PERUMBAVOOR VILLAGE, KUNNATHUNADU TALUK, ERNAKULAM., PIN - 683542

BY ADVS.
R1 BY ADVS.P.JAYABAL MENON
REKHA AGARWAL
R2 BY ADVS.P. THOMAS GEEVERGHESE
TONY THOMAS (INCHIPARAMBIL)
AMRUTHA K.P
SRADHA MOHAN
SAGAR ROSHAN

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON 04.04.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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JUDGMENT

1. Kerala State Electricity Board and its Assistant Executive Engineer who were the defendants 2 and 3 in the suit are the appellants. The 1st respondent is the plaintiff and 2nd and 3rd respondents are defendants 1 and 4.

2. The plaintiff filed the suit originally against three defendants. The 1st defendant is having property on the western side of the plaint schedule property belonging to the plaintiff and his siblings. The plaint schedule property is 13.12 Ares, belonging to the plaintiff, which is situated on the immediate northern side of G.K.Pilla lane. The property of the 1st defendant is also situated on the immediate northern side of G.K.Pilla lane. Originally, there was an electric post on the immediate southern side of the plaint schedule property on the side of G.K.Pilla lane. Defendants 2 and 3 drew an electric line from the said post to

the new house of the 1st defendant, installing two posts inside the eastern boundary of the property of the 1st defendant along with the western boundary of the plaintiff. Defendants 2 and 3 have drawn an electric line crossing the plaint schedule property at the southern portion to the new house of the 1st defendant without the consent of the plaintiff.

3. The case of the plaintiff is that due to the drawing of the electric line, the plaintiff's property became useless. Shifting of electric line from the property of the plaintiff is absolutely necessary. There is sufficient property for the 1st defendant to draw the electric line. Defendants 2 and 3 are preparing to draw a line in continuation of the existing line drawn through the plaint schedule property of the plaintiff. The defendants are to be restrained from doing so. On these allegations, the plaintiff sought a decree for mandatory injunction directing the defendants to remove the electric line which is drawn through

the plaint schedule property and also along the side of the plaint schedule property to the 1st defendant's property and to draw the same without causing any disturbance to the plaintiff.

4. The 1st defendant filed a Written Statement opposing the suit prayers, contending, *inter alia,* that the electric line is not drawn across the property of the plaintiff. The jurisdiction to decide the dispute regarding drawing of electric line is vested with the Additional District Magistrate. Hence the plaintiff is not entitled to get the mandatory and prohibitory injunctions sought for. The plaintiff has no cause of action to file the suit. The 1st defendant sold 25 cents from the northern part of his property to one Haris, and the plaintiff filed the present suit with false allegations about when the electric line was to be drawn to the property given to Haris.

5. Defendants 2 and 3 filed a Written Statement contending, inter alia, that the suit is not maintainable as the prayer is for the

removal of the electric line near and in the plaint schedule property. As per Section 42 of the Electricity Act, 2003, it is mandatory for a distribution licensee to develop and maintain an efficient, coordinated, and economical distribution system in the area, the failure of which will invite penal provisions. Section 67 of the Electricity Act is an enabling provision to take action to fulfill the said objective. As per S.67(4), the authority is specified to consider the dispute involved in this case. Section 145 specifically bars the jurisdiction of the civil court. Since other co-owners are not parties, the suit is bad for non-joinder of necessary parties. The allegation that the defendants have drawn an electric line across the property of the plaintiff is false. The electric line is drawn along the private road owned by the 1st defendant, and no damage is caused to any object or tree of the plaintiff. The plaintiff made a request to shift the electric line to the other side of the private road, and the 1st defendant

considered the request and inquired about the willingness of the 1st defendant, and as the 1st defendant was not willing for such shifting, reply was given to the plaintiff in that regard.

6. The person who purchased property forming the northern part of the 1st defendant's property was impleaded as an additional 4th defendant. He filed a Written Statement contending, *inter alia*, that the suit is not maintainable. Due to the status quo order passed by the court, the 4th defendant could not draw an electric line to his 25 cents of land purchased from the 1st defendant. The 2nd defendant gave a Reply stating that on account of the status quo order of the Court, he is unable to give an electric connection to the 4th defendant. The jurisdiction to decide the dispute is with the Additional District Magistrate.

7. From the side of the plaintiff, PW1 and PW2 were examined and Exts.A1 to A7 were marked. PW1 is the plaintiff. PW2 Advocate Commissioner who prepared Exts.C1 and C1(a). From the side

of the defendants, the 1st defendant was examined as DW1, the 4th defendant was examined as DW2 and Exts.D1 to D3 documents were marked. The Commission Report and Rough Sketch submitted by PW2 are marked as Exts.C1 and C1(a).

8. The Trial Court decreed the suit with costs directing the defendants 2 and 3 to shift the electric line across the plaint schedule property from G.K.Pilla lane to the property of the 1st defendant within thirty days from the date of decree and allowing the plaintiff to get the line shifted through the process of the court, in case of default. The defendants are further restrained from drawing or extending electric line along the side of the plaint schedule property against the provisions of Works of Licensees Rule 2006. The Trial Court found that the suit is perfectly maintainable, and Section 145 of the Electricity Act bars the jurisdiction of the Civil Court with respect to the matters regarding the assessment done by the Officer referred to in

Section 126 or the decision of the appellate authority referred to in Section127 or the determination of the work done by the adjudicating officer appointed under the Act and that since the plaintiff approached the Court against the illegal drawing of electric line in and along the side of the plaint schedule property the said dispute will not come under S. 126 and 127 of the Electricity Act, 2003. The Trial Court found that Ext.C1 Commission Report would show that an electric line is drawn across the plaint schedule property by erecting two concrete posts in the 1st defendant's property; that the electric line drawn is approximately 2 ft. in the plaint schedule property; that plaintiff had obstructed drawing of the line at the time of drawing; that the 2nd defendant did not obtain written permission from the authorities provided under Rule 3(1) of Works of Licensees Rules 2006; that no consent from the plaintiff also obtained for drawing line through his property; that the defendants 2 and 3

are trying to extend the electric line along the western side of the plaint schedule property against the protest of the plaintiff and hence plaintiff succeeded in establishing his apprehension to get a decree for permanent prohibitory injunction.

9. Defendants 2 and 3 filed an Appeal before the First Appellate Court, and the same was dismissed, confirming the judgment and decree of the Trial Court.

10. The First Appellate Court also found that defendants 2 and 3 had drawn an electric line through the plaint schedule property without prior permission from the plaintiff and his siblings and without getting an order from the Additional District Magistrate or the other authorities concerned and hence the drawing of the electric line by the defendants through the plaint schedule property is illegal, and they are not entitled to maintain the said electric line through the plaint schedule property. It was also found that the permanent prohibitory injunction granted by the

Trial Court was fully justified.

11. This Court admitted the Regular Second Appeal on the following substantial question of law.

> "Whether the court went wrong in holding the suit to be maintainable in the light of S.145 of the Electricity Act?"

12. I heard the learned counsel for the appellant Sri.Nirmal S, the learned counsel for the 1st respondent Sri. P.Jayabal Menon and the learned Counsel for the respondents 2 and 3 Sri.Thomas Geevarghese.

13. The learned counsel for the appellant contended that the suit is clearly barred under Section 145 of the Electricity Act. The last limb of Section 145 makes it abundantly clear that 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. The plaintiff did not have any objection for drawing of electric line from G.K.Pilla lane to the first post

situated in the 1st defendant's property. The said line is only a service line slightly passing through the southern corner of the plaint schedule property. It is not causing any difficulty to the plaintiff. The 2nd defendant is statutorily bound to give electric connection to the consumers who apply for electric connection without delay. On account of the order passed by the Trial Court, the 2nd defendant could not give electric connection to the 1st and 4th defendants since the year 2016. It is clear from Ext.A4 Petition submitted by the plaintiff to the 3rd defendant that the complaint is only regarding the extension of the electric line from the 2nd post fixed in the 1st defendant's property to the 3rd post fixed in the 1st defendant's property. As per Second Proviso to Rule 3 (1) of the Works of Licensees Rules, 2006, the plaintiff can file an application before the authorities mentioned therein to remove or alter the works which have been carried out, and hence, the suit is not maintainable in this regard. The learned

counsel cited the decision of this court in **Hamsa. A.P v. Secretary, Kerala State Electricity Board Ltd [2023 KHC 757]** to substantiate the point that the jurisdiction of the civil court is barred with respect to the matters coming within the jurisdiction of the District Magistrate. The Learned Counsel further submitted that the suit is barred under Section 41(h) of the Specific Relief Act, as the plaintiff is having effective alternate remedy before the District Magistrate.

14. On the other hand, the learned counsel for the 1st respondent argued that the suit is perfectly maintainable and the bar under Section 145 of the Electricity Act is only with respect to the matters covered under Sections 126 and 127 of the said Act. Both the limbs of Section 145 of the Electricity Act are to be read conjunctively and not disjunctively to understand the true meaning of the said provision. The last limb of the Section could not be read in isolation. The plaintiff is not liable to file an

application before the District Magistrate under the Second Proviso to Rule 3(1) of the Works of Licensees Rules, 2006. It is well settled by the decision of this Court in **Moan M Joseph v. Kerala State Electricity Board [2014(2) KLT 13]** that the land owner is entitled to seek shifting of electric line within his property and not outside the property. Here, the plaintiff is seeking shifting of the electric line from his property to outside his property, and hence, he can not seek shifting the subject electric line. It is clear from Ext.A4 that he objected to the drawing of the line through his property, and it is not limited to the drawing of the electric line through the 1st defendant's property along the western boundary of the plaintiff. Admittedly, the electric line was drawn across the plaint schedule property by defendants 2 and 3 without obtaining prior consent from the plaintiff as provided in Rule 3(1) of the Works of Licensees Rules, 2006, and without obtaining permission as mandated

under First proviso to the said Rule. The Trial Court granted the decree, and the First Appellate Court confirmed the same finding of illegality in the drawing of the electric line. There is nothing to interfere with the impugned judgments and decrees.

15. The counsel for respondents 2 and 3 contended that on account of the pendency of this dispute, they are not getting an electric connection to their houses. They have been waiting for electric connections since the year 2016. The jurisdiction of the civil court is clearly barred. The dispute is to be adjudicated by the District Magistrate and not by the Civil Court.

16. On conclusion of the arguments, in order to have clarity of the dispute, this Court enquired with the counsel for the 1st respondent/plaintiff whether the plaintiff is aggrieved by the drawing of the electric line through the posts erected inside the eastern boundary of the property of the 1st defendant along with his western boundary. The learned counsel for the 1st

respondent submitted that the grievance of the plaintiff is only with regard to the drawing of the electric line through the southern portion of his property from the existing post in the G.K.Pilla lane to the first post installed in the property of the 1st defendant. As a matter of fact, the plaintiff cannot object to drawing an electric line through the posts erected in the property of the 1st defendant along with the western boundary of the plaint schedule property, as the line will not pass through the plaint schedule property.

17. The first question to be answered is whether the suit is barred under Section 145 of the Electricity Act, 2003. It is apposite to extract Section 145 hereunder.

> **"S.145.Civil court 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."

18. The decision of this Court in **Hamsa. A.P (supra)** cited by the learned counsel for the appellant is a decision rendered in a Regular Second Appeal. It arose from a suit for injunction to restrain the Electricity Board from charging the transformer erected/placed on the plaint schedule property and also for a mandatory injunction directing the defendants to remove the transformer from the plaint schedule property. Though the Trial Court decreed the suit, the First Appellate Court dismissed the suit, finding bar under Section 41(h) of the Specific Relief Act in view of the alternate remedy under Section 164 of the Electricity Act. This Court specifically considered the question of whether Section 145 completely ousts the jurisdiction of the civil court. It

is apposite to extract the relevant portion of Paragraph No.15 of the said decision answering the said question hereunder.

> "15. Reading the above provision, civil court jurisdiction is barred (1) to entertain any suit or proceeding in respect of any matter which an assessing officer referred to in S.126, (2) an appellate authority referred to in S.127 or the adjudicating officer appointed under this Act is empowered by or under this Act to determine and (3) 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. Thus, it is discernible that excluding the above three contingencies dealt in S.145 of the Electricity Act, civil court jurisdiction is not totally barred and in view of S.9 of CPC, civil court can deal with suits and other proceedings in relation to matters not covered by S.145 of the Electricity Act……."

19. This Court dismissed the Regular Second Appeal after entering the following findings in Paragraphs Nos.29 & 30.

> "29.It is in this context, the mandate of S.41(h) of the Specific Relief Act, 1963 assumes significance. It has been provided that when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust.
>
> 30. In the case at hand, indubitably, the plaintiffs, who are aggrieved in the matter of installation of transformer in their property and there is refusal of the demand, at the instance of the plaintiffs, by the Authority, they could very well make a requisition before the District Magistrate for the removal of the same and the said relief, couched in the form of mandatory injunction in the instant suit, civil court jurisdiction is barred as provided under S.145 of the Electricity Act."

20. In the aforesaid decision also, this Court considered the maintainability of a suit similar to the suit filed by the plaintiff in the present case. The only difference is that the subject matter in the said suit is a transformer, and in the present suit, it is an

electric line. The applicable legal provisions are almost the same in the case of both these items. This Court found that the jurisdiction of the civil court is barred under Section 145 of the Electricity Act and Section 41(h) of the Specific Relief Act. This Court took such a stand on account of the availability of alternate remedy before the District Magistrate under Section 16(1) of the Indian Telegraph Act,1885, which is made applicable exercising the power under Section 165 of the Electricity Act,2003.

21. Section 10 of the Telegraph Act permits the Telegraph Authority to place and maintain a telegraph line under, over, along, or across and posts in or upon any immovable property. Section 16(1) provides that if the exercise of the powers mentioned in Section 10 in respect of property referred to in clause (d) of that section is resisted or obstructed, the District Magistrate may, in his discretion, order that the telegraph authority shall be

permitted to exercise them. Section 17 provides for removal or alteration of telegraph line or post.

22. As rightly pointed out by the learned counsel for the 1st respondent, this Court held in the decision in **Moan M.Joseph (supra)** that removal or alteration of the telephone line or post that is permissible under Section 17 is to shift the line to another part of the property through which the line is passing or the post is laid or to alter the line or the post to a higher or lower level or alter in form; and that shifting of a line or post that is permissible under this provision can only be from one part of the property through which the line is passing to another part and not outside the property.

23. Here, admittedly, the line is drawn through the property of the plaintiff. Hence, he could not initiate proceedings under Section 17 of the Telegraph Act to shift the same outside his property.

24. The Works of Licensees Rules, 2006 is made by the Central

Government in the exercise of its powers conferred under Section 176 read with Section 67(2) of the Electricity Act 2003. The Trial Court, as well as the First Appellate Court, relied on the said Rules. The relevant part of Rule 3 is extracted hereunder.

3. Licensees to carry out works.--

(1) A licensee may--

(a) carry out works, lay down or place any electric supply line or other works in, through, or against, any building, or on, over or under any land whereon, wherever or whereunder any electric supply-line or works has not already been lawfully laid down or placed by such licensees, with the prior consent of the owner or occupier of any building or land;

(b) ……..

Provided that in case where the owner or occupier of the building or land raises objections in respect of works to be carried out under this rule, the licensee shall obtain permission in writing from the

District Magistrate or the Commissioner of Police or any other officer authorised by the State Government in this behalf, for carrying out the works:

Provided further that if at any time, the owner or occupier of any building or land on which any works have been carried out or any support of an overhead line, stay or strut has been fixed shows sufficient cause, the District Magistrate or the Commissioner of Police, or the officer authorised may by order in writing direct for any such works, support, stay or strut to be removed or altered.

(2) ……

(3) ……

(4) Nothing contained in this rule shall effect the powers conferred upon any licensee under Section 164 of the Act.

25. Sub Rule (4) of Rule 3 makes it clear that the Rule shall not affect the power under Section 164 of the Act, which means Rule 3 is addition to Section 16(1) of the Telegraph Act.

26. Rule 3(1) (a) mandates to obtain prior consent of the land owner

before drawing line through his property. Admittedly, the 2nd and 3rd defendants have not obtained prior consent from the 1st defendant before drawing an electric line through the plaint schedule property.

27. Even though the learned counsel for the appellant contended that the objection of the plaintiff was against the drawing of the electric line along the western boundary of his property and not with respect to the drawing of the electric line through the southern portion of the plaint schedule property, I find from Ext.A4 submitted by him to the 3rd defendant that the objection of the plaintiff is with respect to the extension of power line from the G.K.Pilla Lane. It would indicate that the plaintiff's objection was against the drawing of the electric line from the post situated on the southern side of his property on the side of G.K. Pilla lane, which was drawn through the southern portion of his property. In such case, defendants 2 and 3 should have

obtained permission from the District Magistrate before drawing an electric line through the property of the plaintiff in view of the objection raised by the plaintiff either under Section 16(1) of the Telegraph Act or under First Proviso to Rule 3(1) of the Works of Licensees Rules, 2006.

28. The drawing of the electric line through private property without obtaining prior consent of the land owner or without obtaining permission from the District Magistrate, when it is objected by the land owner is not an action taken or to be taken in pursuance of any power conferred by or under this Act referred in Section 145 of the Electricity Act. Neither the Electricity Act nor Rules made thereunder does authorize such an action of the 2nd and 3rd defendants. The Civil Court's jurisdiction is not barred under Section 145 with respect to an action which is taken beyond the powers conferred by or under the Electricity Act.

29. Of course, Second Proviso Rule 3(1) of the Works of Licensees

Rules, 2006 permits removal or alteration of the electric line outside the property of the land owner, unlike Section 17 of the Telegraph Act, which permits only shifting within the property of the land owner. The decision of this Court in **Moan.M** (supra) rendered with respect to Section 17 of the Telegraph Act is not applicable to the matters covered in Second Proviso to Rule 3(1) of the Works of Licensees Rules, 2006. But, when the 2nd and 3rd defendants have acted beyond the powers conferred on them by the Electricity Act and the Rules made thereunder, their action is an illegal action, and they shall not be permitted to contend that it is for the land owner to approach the District Magistrate for removal or alteration under Second Proviso to Rule 3(1) of the Works of Licensees Rules, 2006. Hence, I find that the suit filed by the plaintiff is perfectly maintainable. I answer the substantial question of law in the negative and against the appellant.

30. Though the Regular Second Appeal is liable to be dismissed confirming the judgment and decree passed by the Trial Court, which is confirmed by the First Appellate Court, it does not in any way fetter the right of the 2nd and 3rd defendants to approach the authority concerned either under Section 16(1) of the Indian Telegraph Act, 1885 or under Second Proviso to Rule 3(1) of the Works of Licensees Rules, 2006 to remove the objection raised by the plaintiff or to obtain permission and thereafter draw the electric line. The plaintiff will get the opportunity to present his case in such proceedings, and it is for such other authority to find out the least inconvenient feasible route to draw an electric line to give electricity connections to the 1st and 4th defendants. Even if the existing line drawn through the southern part of the plaint schedule property is removed, it is well within the powers of the 2nd and 3rd defendants to draw an electric line after getting permission from the District Magistrate. Plaintiff is not having

absolute right to prevent drawing of electric line through his property in view of Section 10 of the Telegraph Act which permits the 2nd defendant to place and maintain an electric line under, over, along or across, and posts in or upon, any immovable property. The only thing is that such right of the 2nd defendant under Section 10 is subject to the provision Section 16(1) of the Telegraph Act and Rule 3 of the Works of Licensees Rules, 2006, which mandate obtaining permission from the Authority concerned. I once again make it clear that the objection of the plaintiff is only with respect to the drawing of the electric line inside the southern portion of the plaint schedule property, and the plaintiff cannot raise any objection with respect to the line passing through the property of the 1st defendant along with his western boundary. Even without obtaining permission either under Section 16(1) of the Telegraph Act or under First Proviso to Rule 3(1) of the Works of Licensees

Rules, 2006, the defendants 2 and 3 are free to charge the above said electric line passing through the property of the 1st defendant for giving electric connections to the 1st and 4th defendants if it is possible to charge the same avoiding the line drawn through the plaint schedule property. The 2nd and 3rd defendants are statutorily duty-bound to supply electricity to the owner or occupier of any premises within one month from the date of receipt of the application requiring supply under Section 43 of the Electricity Act, 2003. It is quite unfortunate that defendants 1 and 4 have been waiting for the supply of electricity since the last 9 years. They are the ultimate sufferers of this litigation. Fortunately, this Court could dispose of this admitted Regular Second Appeal of the year 2024 without much delay. Otherwise, the defendants 1 and 4 will have to wait another 5 to 10 years to get electricity connections. The right of the plaintiff was only to show an alternate, feasible, convenient

route for giving electric connection to defendants 1 and 4. If the authority concerned finds that the route through the property of the plaintiff is the most feasible route, the plaintiff has no right to object to the same. On the mere lapse of defendants 2 and 3 to obtain the required permission from the authority concerned, the litigation started, and it continued for nine years. Even after starting the litigation, defendants 2 and 3 could have taken steps to obtain the necessary permission, accepting their lapses, and thus could have avoided the huge delay in the matter. Unfortunately, it was not done. It is not fair and proper for this Court sitting in the jurisdiction of the Second Appeal to issue directions to the appellants/defendants 2 and 3 in the Appeal filed by them to take emergent steps to supply electricity to the 1st and 4th defendants. This Court hopes and trusts that the appellants will take emergent steps to provide electricity connections honouring the duties bestowed upon them under

Section 43 of the Electricity Act. Defendants 1 and 4 are free to obtain necessary orders from the appropriate forum in case of any further delay on the part of the appellants/defendants 2 and 3 in supplying electricity to them.

31. The Regular Second Appeal is dismissed without costs subject to the observations in the preceding Paragraph No.30 of this judgment.

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M.A.ABDUL HAKHIM

JUDGE

Jma/shg