

GAHC010078572023



THE GAUhati HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Civil)/999/2023

SUNITA AGARWAL
W/O BIKASH KUMAR GOEL, R/O B G ROAD, P.O. AND P.S. AND DIST.
SIVASAGAR ASSAM, PIN 785640.

VERSUS

M/S SREE MAA MULTI KITCHEN AND RESTAURANT AND 4 ORS.
A PROPRIETORSHIP CONCERN OWNED AND REP. BY ITS SOLE
PROPRIETOR JIBAMONI KAKOTY, AGED ABOUT 62 YEARS, S/O LT.
NAGENDRA NATH KAKOTY, R/O HOUSE NO. 31, PATARKUCHI ,BELTOLA,
P.O. GUWAHATI, 781029, DIST. KAMRUP M, ASSAM

2:THE STATE OF ASSAM
A GOVT. OF ASSAM UNDERTAKING DULY INCORPORATED UNDER THE
COMPANIES ACT
1956 HAVING ITS OFFICE AT BIJULEE BHAWAN PALTAN BAZAR
GUWAHATI 781001 REP. BY ITS MANAGING DIRECTOR

3:THE SDO
ULUBAARI ELECTRICAL SUB DIVISION APDCL (LAR)
ULUBARI GUWAHATI 7 DIST. KAMRUP M ASSAM

4:THE SUB DIVISIONAL ENGINEER ULUBARI ELECTRICAL SUB DIVISION
APDCL (LAR)
ULUBARI
GUWAHATI-7
DIST. KAMRUP M
ASSAM

5:THE ASSISTANT GENERAL MANAGER
GED (C)
APDCL (LAR
) ULUBARI

GUWAHATI 7
DIST. KAMRUP M
ASSAM

Advocate for the Petitioner : MR. S CHAMARIA

Advocate for the Respondent : SC, APDCL

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

Date : 12-04-2023

1. This is an application filed by the applicant/respondent No. 5 to set aside the order dated 29.03.2023 passed in WP(C) No. 1773/2023.
2. The facts of the case as projected by the writ petitioner is that he is a tenant under the respondent No. 5. However, due to some dispute regarding payment of rent, the respondent No. 5 applied to the APDCL authorities, vide letter dated 09.03.2023, for temporary disconnection of electricity of the premises, which was let out to the writ petitioner. The said application being acted upon by the APDCL, electricity was disconnected from the premises occupied by the writ petitioner, which is being used as a restaurant.
3. The petitioner thereafter made a request for electricity connection with the APDCL, which was rejected vide order dated 13.03.2023 as 2 (two) electricity connections could not be given for one premise.
4. The writ petitioner thereafter approached this Court and this Court, vide order dated 29.03.2023, directed the petitioner to submit an application to the APDCL for a temporary electricity connection. The temporary electricity connection was thereafter provided by the APDCL to the writ petitioner's

premises.

5. The grievance of the applicant/respondent No. 5 is that the writ petitioner is not a tenant of the respondent No. 5. Further, after the electricity had been disconnected to the premises occupied by the writ petitioner, the writ petitioner had made an application to the APDCL authority for a separate electricity connection. However, vide order dated 13.03.2023, the APDCL had rejected the writ petitioner's application, on the ground that electricity connection having already been given for the said premises in the name of the respondent No. 5, a 2nd electricity connection could not be given to any other person under Clause 3.10.2 of the Assam Electricity Regulatory Commission (Electricity Supply Code) Regulation, 2017.

6. The counsel for the respondent No. 5 submits that the writ petitioner should have filed an appeal against the order dated 13.03.2023 and should not have approached this writ Court. He submits that as there is an alternative remedy available for an appeal against the order dated 13.03.2023, the petitioner should have availed the alternative remedy available and the interim order passed on 29.03.2023 should be set aside.

7. The learned counsel for the applicant/respondent No. 5 further submits that Title Suit No. 184/2023 has been filed by the applicant/respondent No. 5 before the Court of the learned Civil Judge No. 2, Guwahati praying for eviction and realisation of arrears of rent from the writ petitioner. He thus submits that if the writ petitioner was having any grievance with regard to the electricity connection, he could have made an application before the learned Trial Court.

8. Mr. SP Sharma, learned counsel for the APDCL submits that electricity connection is a basic amenity, which a person cannot be deprived from, though

he may be a tenant, as has been laid down by the Apex Court in ***Dilip (Dead) Through Lrs. –vs- Satish and Others***, reported in ***(2022) SCC Online SC 810***. He also submits that a temporary electricity connection has already been given to the premises occupied by the writ petitioner and as such, there is nothing left to be decided in the present writ petition. He submits that though the writ petitioner had applied for a permanent electricity connection under Clause 3.10.2 of the Assam Electricity Regulatory Commission (Electricity Supply Code) Regulation, 2017, the petitioner was not entitled to the same. However, in view of the judgment of the Apex Court in ***Dilip (Dead)*** (supra) and the order dated 29.03.2023 passed by this Court, a temporary electricity connection has been given to the writ petitioner.

9. I have heard the learned counsels for the parties.

10. In the case of ***Dilip (Dead)*** (supra), the Apex Court has held that it is a well settled proposition of law that a person cannot be deprived of electricity, which is a basic amenity. It further held that electricity cannot be declined to a tenant on the ground of failure/refusal of the landlord to issue no objection certificate and all that the electricity supply authority is required to examine is whether the applicant for electricity connection is in occupation of the premises in question.

11. The law laid down by the Apex Court in ***Dilip (Dead)*** (supra) clearly goes to show that a person in occupation of a premises/building cannot be deprived of an electricity connection. As it is an undisputed fact that the writ petitioner is in occupation of the premises, which is the subject matter of a dispute in Title Suit No. 184/2023, before the Court of the learned Civil Judge No. 2, Guwahati, this Court does not find any ground to modify/vacate or set aside the order dated 29.03.2023 passed by this Court, as the issue herein is

only with regard to the prayer of the petitioner to be given an electricity connection.

12. As the learned Standing Counsel, APDCL has stated that a temporary electricity connection has been provided to the writ petitioner, nothing further requires to be adjudicated in the writ petition. The dispute with regard to whether the writ petitioner is a tenant, who is liable to pay rent and is to be evicted, being an issue to be decided by the learned Trial Court, the interlocutory application is dismissed.

13. It is made clear that till such orders are passed by the learned Trial Court in Title Suit No. 184/2023 or by any competent authority, the temporary power connection provided to the writ petitioner's premises should continue, subject to payment of all charges.

JUDGE

Comparing Assistant