

GAHC010160052023



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

**Case No. : WP(C)/4177/2023**

PALASH CHAUDHURY AND ANR  
SON OF PABITRA KUMAR CHAUDHURY,  
RESIDENT OF NEEHAL ENCLAVE,  
FLAT NO. 503, BORBARI, VIP ROAD,  
GUWAHATI, P.O.- HENGRABARI, P.S. DISPUR,  
PIN- 781036, DISTRICT- KAMRUP(M), ASSAM.

2: KAUSTAV CHOUDHURY  
SON OF SRI PALASH CHAUDHURY

RESIDENT OF NEEHAL ENCLAVE

FLAT NO. 503  
BORBARI  
VIP ROAD

GUWAHATI  
P.O.- HENGRABARI  
P.S. DISPUR

PIN- 781036  
DISTRICT- KAMRUP(M)  
ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS.  
REPRESENTED BY ITS COMMISSIONER AND SECRETARY TO THE  
GOVERNMENT OF ASSAM,  
POWER DEPARTMENT, DISPUR,  
GUWAHATI-06.

2: ASSAM STATE ELECTRICITY BOARD  
REPRESENTED BY ITS CHAIRMAN

BIJULI BHAWAN  
PALTAN BAZAR

GUWAHATI-1  
DISTRICT- KAMRUP(M)

ASSAM.

3:THE ASSISTANT GENERAL MANAGER  
BASISTHA ELECTIRCAL SUB DIVISION  
APDCL  
GUWAHATI  
PIN- 781029  
DISTRICT- KAMRUP(M)  
ASSAM.

4:THE SUB-DIVISIONAL ENGINEER  
BASISTHA ELECTRICAL SUB DIVISION  
APDCL (LAR)  
SIXMILE  
GUWAHATI  
PIN- 781022

DISTRICT- KAMRUP(M)  
ASSAM.

5:ATIQUR RAHMAN  
BUILDER/ DIRECTOR OF NEHARS AND ASSOCIATES PVT. LTD.

CHRISTIAN BASTI  
G.S. ROAD

P.O. AND P.S.- DISPUR  
GUWAHATI-05

DIST.- KAMRUP(M)  
ASSAM

**Advocate for the Petitioner** : MR. S BARMAN

**Advocate for the Respondent** : GA, ASSAM

**BEFORE  
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

**ORDER**

**05.10.2023**

Heard Mr. S Hoque, learned counsel for the petitioners; Mr. G. Bokolial, learned Junior Government Advocate, Assam for the respondent no. 1; Mr. B Choudhury, learned Standing Counsel, APDCL for the respondent nos. 2, 3 & 4; and Mr. S. Khound, learned counsel for the respondent no. 5.

2. In view of the nature of the grievance raised in this writ petition and as agreed to by the learned counsel for the parties, the writ petition is taken up for disposal at the motion stage itself.

3. The case, in brief, projected by the two writ petitioners, who are the father and the son respectively, in this writ petition, is that :

3.1. The petitioner no. 1 has purchased a flat being Flat no. 503, situate on the 5<sup>th</sup> floor of a multi-storied RCC apartment building, named and styled as 'Neehal Enclave', built and standing over a plot of land measuring 3 Kathas, covered by Dag no. 109 & K.P. Patta no. 34, at Village - Hengrabari [Nonke], Mouza-Beltola, District - Kamrup [Metro], Assam [hereinafter referred to as 'the subject multi-storied building' and 'the subject-plot' respectively, for easy reference].

3.2. The respondent no. 5 is the builder/developer of the subject multi-storied building. For the purpose of purchasing the flat, the petitioner no. 1 and the respondent no. 2 had entered into an agreement for sale of a flat i.e. Flat no. 503, located on the 5<sup>th</sup> floor of the subject multi-storied building vide registered Agreement no. 3711 dated 04.04.2014 before the Deputy Registrar, Kamrup [Metro], Guwahati. As per the said registered Agreement for

Sale, the total consideration payable by the petitioner no. 1 as the purchaser of the flat to the respondent no. 5 being the builder developer/seller, was Rs. 29,00,000/- [Rupees twenty nine lakhs] only.

3.3. It has been projected in this writ petition that the petitioner no. 1 had paid the entire consideration payable for purchase of the flat i.e. Flat no. 503 through cheques and loan disbursed by LIC Housing Finance Ltd., within July, 2014. The petitioners have stated that despite payment of the entire consideration, the respondent no. 5 as a builder/developer, has not executed the final Sale Deed in favour of the petitioner no. 1 in the subsequent period, though the possession of the flat, Flat no. 503 was handed over to the petitioners in September, 2014. It has, thus, been categorically asserted that the petitioner no. 1 and his family have been residing in Flat no. 503 since September, 2014 after such handing over and taking over possession. In support of such contentions, the petitioners have annexed a number of documents in the writ petition, including the registered Agreement for Sale of the flat, acknowledgment receipts evidencing receipt of different amounts by the respondent no. 5 from the petitioner no. 1, Loan Sanction Letter of the LIC Housing Finance Ltd., etc. It also *prima facie* emerges that the flat, Flat no. 503, wherein the petitioners are residing, has also been assessed in the year 2016 for payment of the municipal taxes, etc., by the Guwahati Municipal Corporation [GMC] and the petitioners have been paying such municipal taxes, etc.

3.4. The petitioners have stated that on 16.05.2023, the respondent APDCL authorities had disconnected the electricity connection to the flat, Flat no. 503 of the subject multi-storied building. It has been stated that the petitioners have thereafter, submitted an application for providing a separate and individual electricity connection to their flat i.e. Flat no. 503 by duly submitting an application before the respondent APDCL authorities on 13.06.2023 as earlier the electricity supply was being made to the flat through an electricity connection standing in the name of an agent of the respondent no. 5. But, the respondents APDCL authorities have informed the petitioners that they are not in a position to provide a separate and individual electricity connection to the petitioners' flat, Flat no. 503 located in subject multi-storied building due to non-submission of a No Objection Certificate [NOC] from

the respondent no. 5. As a result, the petitioners have to obtain electricity connection in temporary manner by paying huge amounts from time to time frequently, as charged by the respondent APDCL authorities.

4. Mr. Choudhury, learned Standing Counsel, APDCL has submitted that to process the application submitted by the petitioners for providing a separate and individual electricity connection to their flat i.e., Flat no. 503 which is located in the subject multi-storied building, of which the respondent no. 5 is the developer/builder, a No Objection Certificate [NOC] from him is necessary.

5. Mr. Khound, learned counsel appearing for the respondent no. 5 has submitted that the petitioners are yet to pay an amount of Rs. 6,00,000/- [Rupees six lakhs] to the respondent no. 5 towards consideration of the flat they have purchased from him. As the petitioners have not paid such balance consideration, issuance of any No Objection Certificate [NOC] does not arise. Mr. Hoque, learned counsel for the petitioners has refuted such contention made by Mr. Khound.

6. It is now well settled proposition of law that electricity is a basic amenity of which a person cannot be deprived of. The Hon'ble Supreme Court of India in Criminal Appeal no. 810/2022 [Dilip (Dead) through Lrs. vs. Satish and Others] decided on 13.05.2022, has held that electricity cannot be declined to a tenant on the ground of failure/refusal of the landlord to issue no objection certificate. It has been emphasized that all that the electricity supply authorities are required to examine as to whether the applicant for electricity connection is in occupation of the premises in question.

7. The alleged contention of the respondent no. 5 about non-payment of the balance consideration of the flat i.e. Flat no. 503, located in the subject multi-storied building standing on the subject-plot by the petitioners, cannot be a justified ground to deprive the electricity connection to the flat, as electricity is a basic amenity of which a person shall not be deprived

of ordinarily. It *prima facie* transpires that the petitioners are in occupation of the flat, Flat no. 503 located in the subject multi-storied building standing on the subject-plot since September, 2014. The learned counsel for the respondent no. 5 has not disputed such position. In any view of the matter, such alleged dispute concerning non-payment of the balance consideration, cannot and should not stand in the way of providing the basic amenity of electricity in the fact situation obtaining in the case. In respect of such alleged dispute as regards non-payment of any amount, the respondent no. 5 is at liberty to seek redressal in an appropriate forum.

8. In view of the above, it is directed to the respondent APDCL authorities that they shall take immediate measures to provide a separate and individual electricity connection to the premises in question i.e. Flat no. 503 located in the subject multi-storied building, standing on the subject-plot, subject to compliance of the terms and conditions of supply of electricity including payment of the requisite charges, by the petitioners and without insisting on a No Objection Certificate [NOC] from the respondent no. 5, within a period of 10 [ten] days from the date of receipt of a certified copy of this order at the office of the respondent no. 3. In the event the respondent APDCL authorities face any obstacles in providing such separate and individual electricity connection, they may take the assistance of appropriate authorities as deem fit and proper.

9. With the observations and directions given above, the writ petition stands disposed of. No costs.

**JUDGE**

**Comparing Assistant**