

GAHC010004842024



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

Case No. : WP(C)/129/2024

SAMSUL HOQUE
S/O- LATE SAIFUDDIN AHMED,
R/O- VILLAGE MAROI,
P.O AND P.S- SIPAJHAR,
DIST- DARRANG, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMMISSIONER AND SECRETARY , POWER DEPARTMENT,
DISPUR, GUWAHATI-06

2:THE ASSAM STATE ELECTRICITY BOARD (ASEB)
REP. BY THE GENERAL MANAGER
ASSAM POWER DISTRIBUTION CO. LTD
BIJULEE BHAWAN
PALTANBAZAR
GUWAHATI-01

3:THE EXECUTIVE ENGINEER
ASSAM POWER DISTRIBUTION CO. LTD
DARRANG
MANGALDOI
DIST- DARRANG
ASSAM

4:THE SUB DIVISIONAL ENGINEER
ASSAM POWER DISTRIBUTION COMPANY LTD
P.O AND P.S- - SIPAJHAR
DIST- DARRANG
ASSAM

5:DR. SAHJAHAN ALI
S/O- LATE ABDUL HAQUE

VILLAGE DUWARIPARA
P.O AND P.S- SIPAJHAR
DIST- DARRANG
ASSA

Advocate for the Petitioner : MR H R CHOUDHURY

Advocate for the Respondent : SC, APDCL

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 12-01-2024

Heard the learned counsel for the parties.

2. The instant writ petition is taken up for disposal at the motion stage itself taking into account the facts involved therein.

The petitioner herein is admittedly a tenant of the respondent No. 5. In the writ petition, various allegations have been made against the respondent No. 5 to the effect that the respondent No. 5 wants to evict the petitioner without following the due process of law, for which a suit was filed before the Court of Civil Judge (Jr. Division) No. 1, Darrang, Mangaldoi, which was registered as Title Suit No. 146/2023 praying *inter alia* that the petitioner should not be evicted from the suit premises without following the due process of law. The petitioner also sought for a decree of mandatory injunction to the effect that the respondent No. 5 should pay the electricity bill of the suit premises so that the APDCL authorities do not disconnect the electricity connection in respect to the suit premises. It is also pertinent to take note that along with the said suit, an application was also filed seeking an injunction thereby restraining the APDCL authorities from disconnecting the electricity connection from the suit premises. The record further reveals that the learned trial Court, vide order dated 20.12.2023, issued notice making the same returnable on 17.02.2024. However, no ad interim *ex parte* injunction was

granted in favour of the petitioner.

4. Be that as it may, pursuant thereto, the electricity connection of the petitioner was disconnected by the respondent APDCL authorities on the instructions of respondent No. 5, for which the instant writ petition has been filed.

5. While the matter was listed before this Court on 10.01.2024, this Court had asked Mr. B. Choudhury, learned Standing Counsel, APDCL to obtain instructions as to why the electricity connection was disconnected. Today, when the matter is taken up, Mr. B. Choudhury, learned Standing Counsel, APDCL has placed before this Court a written instruction dated 11.01.2024, issued by the Sub-divisional Engineer, APDCL, Sipajhar Electrical Sub-division, wherein it is stated that the respondent No. 5 is the consumer of the meter/electricity connection and the electricity bill for the months of November and December, 2023 was not paid for which the respondent No. 5 was duly intimated and pursued. Subsequently, the respondent No. 5 had submitted an application seeking permanent disconnection of the electricity connection of the premises in question and, accordingly, the APDCL authorities disconnected the electricity connection from the suit premises on 03.01.2024. It was also categorically mentioned in the written instruction that in respect to the dispute between the petitioner and the respondent No. 5 the APDCL authority has nothing to do with their internal conflicts. As the electricity connection was in the name of the respondent No. 5 and as there was a request from the respondent No. 5 for permanent disconnection, the disconnection was carried out. The written instruction so placed before this Court is kept on record and marked with the letter "X".

6. This Court has also taken note of the judgment rendered by the Supreme Court in the case of ***Dilip (Dead) through Lrs. Vs. Satish & Others***, reported in **2022 SCC online SC 810**, wherein the Supreme Court had, in paragraph 9 of the said

judgment, categorically observed that it is now well settled proposition of law that electricity is a basic amenity of which a person cannot be deprived. It was also observed that electricity cannot be declined to a tenant on the ground of failure/refusal of the landlord to issue no objection certificate. 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.

7. Taking note of the above, this Court has put a pointed query to the learned counsel for the petitioner as to whether the petitioner would be agreeable for making application for a separate electric connection. The learned counsel for the petitioner submits that the petitioner is agreeable for applying for a separate electricity connection to the premises in question.

8. In view of the above, this Court therefore grants liberty to the petitioner to submit appropriate application before the concerned respondent APDCL authority seeking a separate electricity connection and in the event of such application being filed, the respondent APDCL authorities shall, in accordance with their Rules and Regulations, provide separate meter/electricity connection to the petitioner subject to payment of necessary dues. Further to that, taking into account the law laid down by the Supreme Court in the case of ***Dilip (Dead) through Lrs.*** (supra), this Court makes it clear that the respondent APDCL authorities shall not insist upon the petitioner for submission of No Objection Certificate from the respondent No. 5.

9. The Writ petition stands disposed of in terms of the above.

JUDGE

Comparing Assistant