

GAHC010162132022



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

Case No. : WP(C)/5379/2022

ROBIN SAIKIA @ MANORANJAN SAIKIA
S/O-LATE PRAFULLA SAIKIA ,
R/O- RANGMAHAL,
P.O- RANGMAHAL,
P.S- CHANGSARI,PIN-781030,
DIST- KAMRUP, ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY ITS PRINCIPAL SECRETARY TO THE GOVERNMENT OF ASSAM,
POWER (ELECTRICITY) DEPARTMENT, D- BLOCK, 1ST FLOOR, ASSAM
SECRETARIAT, DISPUR, GUWAHATI-06

2:THE ASSAM POWER DISTRIBUTION COMPANY LTD
HAVING ITS REGISTERED OFFICE AT 4TH FLOOR
BIJULEE BHAWAN
PALTAN BAZAR
GUWAHATI-01
ASSAM

REP. BY ITS MANAGING DIRECTOR
APDCL

3:MANAGING DIRECTOR
APDCL
4TH FLOOR
BIJULEE BHAWAN
PALTAN BAZAR
GUWAHATI-01
ASSAM

4:THE ASSTT. GENERAL MANAGER
GED (W) APDCL
AMINGAON
KAMRUP
ASSAM
PIN-781031

5:THE SUB- DIVISIONAL ENGINEER
AMINGAON ELECTRICAL SUB DIVISION
APDCL (LAR) AMINGAON
GUWAHATI
KAMRUP
ASSAM
PIN-781031

6:AJITAV CHOUDHURY
S/O-LATE AKASH PRATIM CHOUDHURY
R/O- RANGMAHAL
P.O- RANGMAHAL
P.S- CHANGSARI
PIN-781030
IST- KAMRUP
ASSAM

Advocate for the Petitioner : MR. R ALI, M KALITA,MR M BORO

Advocate for the Respondent : SC, APDCL, R SARMAH (R-6),MR. A KHOUND (R-6)

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date of hearing : 12.08.2024

Date of Judgment : 12.08.2024

Judgment & order(Oral)

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Heard Mr. P. P. Dutta, learned counsel, appearing on behalf of the petitioner. Also heard Mr. B. Das, learned standing counsel, Assam Power Distribution Company Ltd. (APDCL), and Mr. R. Sarmah, learned counsel, appearing on behalf of the respondent No. 6.



2. The petitioner, by way of instituting the present writ petition, has raised a grievance with regard to the disconnection of his electricity connection and has further prayed for a direction to reconnect/restore the electricity connection to his premises.

3. The petitioner, in the present proceeding, has contended that since the time of his great grandfather, the family of the petitioner, herein, as a permissive occupier, has been possessing a plot of land measuring 1 katha 10 lecha out of 4 katha of land under Dag No. 1038 K.P. No. 160 of Revenue village : Rangmahal, Mouza : Sila Singurighopa, in the district of Kamrup.

4. The petitioner's father in the year 1982, is contended to have constructed a temporary house over the said plot of land and the petitioner, herein, in the year 2006-2007, by demolishing the temporary structure; constructed an Assam Type house over the said plot of land. The petitioner in the year 2014, applied for an electricity connection and accordingly, the Assam Power Distribution Company Ltd.(APDCL) authorities on 14.10.2014, issued an electricity connection in the name of the petitioner against the said house so constructed over the said plot of land so possessed by him.

5. The respondent No. 6 i.e. the landowner of the land possessed by the petitioner, herein, submitted a complaint before the respondent No. 5, *inter alia*, objecting to the electricity connection as granted in favour of the petitioner over the house constructed on his land.

6. It is contended that on the basis of the said complaint; an inquiry was made and the Assam Power Distribution Company Ltd.(APDCL) authorities on

receiving information that the land, in question, was recorded in the *Chita* in the name of the respondent No. 6; proceeded to disconnect the electricity connection so granted to the petitioner, herein, on 12.05.2022, despite the petitioner submitting an application on 11.05.2022, praying that the Assam Power Distribution Company Ltd.(APDCL) authorities considering that the land is under the possession of his family since the last around 40/50 years, be pleased not to disconnect the said electricity connection.

7. Being aggrieved by the said disconnection; the petitioner has approached this Court by way of instituting the present proceeding.

8. This Court, noticing the said factual matrix, proceeded vide order, dated 22.08.2022, to direct the Assam Power Distribution Company Ltd.(APDCL) authorities to restore electricity connection to the premises of the petitioner, herein.

9. Mr. Dutta, learned counsel for the petitioner, submits that the question of possession of the petitioner's family over the said land, cannot be disputed. The learned counsel contends that the petitioner's family is in continuous possession of a part of the land covered by Dag No. 1038 K.P. No. 160 of Revenue village : Rangmahal, Mouza : Sila Singurighopa, in the district of Kamrup.

10. Mr. Dutta, learned counsel, further submits that the respondent No. 5, as disclosed, by the petitioner in his representation, dated 11.05.2022, had already moved before the jurisdictional Deputy Commissioner, pertaining to the question of possession of the land, in question, and other ancillary issues

and the said matter is pending disposal.

11. Mr. Dutta, also submits that a No Objection Certificate (NOC) from the respondent No. 6 under such circumstances for obtaining an electricity connection to the premises of the petitioner, would not be permissible.

12. Mr. Das, learned standing counsel, Assam Power Distribution Company Ltd.(APDCL), submits that in the absence of a No Objection Certificate(NOC) from the land owner i.e. respondent No. 6; the electricity connection could not have been granted to the premises of the petitioner, which, admittedly, was constructed over the land which is recorded in the name of respondent No. 6, herein.

13. Mr. Das, learned standing counsel for the Assam Power Distribution Company Ltd.(APDCL) authorities, has submitted that it having come on record that the land, in question, wherein the premises of the petitioner is so constructed, is recorded, in the record of rights, against the name of the respondent No. 6; the No Objection Certificate(NOC) not being on record from the respondent No. 6, the electricity connection as granted to the petitioner, herein, came to be so disconnected. However, in terms of the interim directions passed by this Court in the present proceeding; the electricity connection was so restored.

14. Mr. Sarmah, learned counsel for respondent No. 6, by reiterating the submissions of Mr. Das, learned standing counsel, Assam Power Distribution Company Ltd.(APDCL); submits the land over which the petitioner has constructed his house belongs to the respondent No. 6 and he being the land

owner and a No Objection Certificate(NOC) not having been submitted by him; the electricity connection could not be so granted to the petitioner, herein.

15. The factual position as narrated hereinabove; in the absence of any materials being brought on record by the respondent No. 6, goes to demonstrate that out of 4 kathas of land covered by Dag No. 1038 K.P. No. 160 of Revenue village: Rangmahal, Mouza: Sila Singurighopa, in the district of Kamrup; 1 katha 10 lechas is under the possession of the petitioner, herein, as on date.

16. The said possession of the land, in question, has been contended, to be with the family of the petitioner for the last around 40/50 years. The said issue as to the possession having already been raised by the respondent No. 6 before the jurisdictional Deputy Commissioner; this Court would not proceed further to consider the same. However, for the purpose of this case; it having come on record, that the land, in question, is under the possession of the petitioner, herein, and he being the occupier of the land; it is permissible for him to apply for an electricity connection and a No Objection Certificate(NOC) from the respondent No. 6, in view of the facts involved not being required; this Court is now to consider as to whether under such circumstances, the petitioner can be granted an electricity connection.

17. The said issue arose before the Hon'ble Supreme Court in the case of **Dilip(dead) through LRs. V. Satish & ors.**, reported in **2022 SCC Online SC 810**, wherein, the Hon'ble Supreme Court, on consideration of the matter, drew the following conclusions:

“9. It is now well settled proposition of law that electricity is a basic amenity of which a person cannot be deprived. 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.”

18. Applying the said conclusions as drawn by the Hon'ble Supreme Court in the case of **Dilip(dead) through LRs.** (supra) to the facts of the present case; the petitioner, herein, being in continuous possession of the land, in question, over which his house is so constructed; the Assam Power Distribution Company Ltd.(APDCL) authorities has to construe him to be an occupier and accordingly, without insisting upon a No Objection Certificate(NOC) from the land owner i.e. respondent No. 6, has to provide an electricity connection to the petitioner, herein, in respect of his said premises in-as-much as it is held that electricity is a basic amenity of which, a person cannot be deprived, subject, however, to imposition of such charges, if any, applicable for providing such electricity connection.

19. In view of the above position; it is hereby directed that the Assam Power Distribution Company Ltd.(APDCL) authorities shall be required to provide electricity connection to the premises of the petitioner, herein, subject to such charges that the petitioner may be required to so pay and continue to provide the said electricity connection to the premises of the petitioner till the time, he continues to possess the land over which his house is so constructed.

20. It is further provided that the Assam Power Distribution Company Ltd. (APDCL) authorities shall continue to provide to the petitioner, herein, the electricity connection, subject to the directions passed by this Court, hereinabove, as well as the payment of the electricity dues as calculated, at the permissible periodical intervals, by the petitioner, herein.

21. It is to be noted that the observations made hereinabove with regard to the possession of the land, in question, by the petitioner, herein, has been so made only for the purpose of determining as to whether the petitioner can be extended with an electricity connection and for no other purpose.

22. With the above directions and observations, this writ petition stands disposed of.

JUDGE

Comparing Assistant