

GAHC010255442018



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

Case No. : WP(C)/7944/2018

SURESH PRASAD
S/O SRI HEM NARAYAN PRASAD
MAIN ROAD,
HOJAI, DIST. HOJAI, ASSAM, PIN -782435.

VERSUS

THE ASSAM POWER DISTRIBUTION CO. LTD. AND 4 ORS.
BIJULEE BHAWAN,
PALTAN BAZAR, GUWAHATI -01, REP. BY ITS CHAIRMAN

2:THE MANAGING DIRECTOR

ASSAM POWER DISTRIBUTION COMPANY LIMITED
BIJULEE BHAWAN

PALTAN BAZAR
GUWAHATI-01.

3:ASSTT. GENERAL MANAGER

APDCL
HOJAI ELECTRICAL DIVISION
HOJAI.

4:DEPUTY MANAGER

HOJAI ELECTRICAL SUB-DIVISION

APDCL (CAR)
HOJAI
ASSAM.

5:SITA RAM OJHA
S/O LT. MUKTIRAM OJHA
MAIN ROAD

HOJAI
DIST. HOJAI
ASSAM
PIN - 782435

Advocate for the Petitioner : MR. K D SARMA,

Advocate for the Respondent : SC, APDCL, MR. R DE (R5),MS. D DEVI (R5)

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 12.08.2024

Heard Mr. K.D. Sarma, learned counsel for the petitioner. Also heard Mr. K.P. Pathak, learned Standing counsel, APDCL appearing for the respondents No.1, 2, 3 and 4 and Mr. R. Dey, learned counsel for the respondent No.5.

2. The challenge in the present proceeding is to a notice dated 05.11.2018 requiring the petitioner herein to submit an NOC from the land owner and/or any copy of agreement executed between the petitioner and the land owner for the purpose. It was further provided that in the event of failure to submit the said document, the electricity connection as allotted to the petitioner herein would stand disconnected.

3. The petitioner in the present proceeding contends that the land in question, was in possession of his father for the last 46 years and the premises is used as a hotel-cum-residence. The electricity connection to the said premises was obtained in the year 1984 in the name of his father. Thereafter, the said connection was taken in the name of the petitioner in the year 2015. The petitioner contends that

they having been in possession of the land since long and also the name of the father of the petitioner being reflected in the *chita* as a possessor of the aforesaid land, therefore, the possession of the said land by the petitioner and his family cannot be disputed. However, the NOC now sought to be submitted from the land owner would be impossible inasmuch as, the same would never be so issued by the land owner.

4. Mr. R. Dey, learned counsel submits that it is not in dispute that the respondent No.5 is the land owner. However, he submits that the contention of the petitioner as made in the writ petition that they are in possession of the said premises since long, cannot be disputed by him, in absence of adequate instruction in this connection from the respondent No.5.

5. Mr. K.P. Pathak, learned Standing counsel, APDCL submits that the communication dated 05.11.2018 was issued to the petitioner in the present proceeding, in terms of the provisions of Regulation 4.2b(vi) of the Assam Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2017, which requires an occupier of a plot of land and/or building to submit an NOC from the owner of the plot of land for being allotted with the electricity connection.

6. Mr. K.P. Pathak, learned counsel fairly submits that the above proposition may not be sustainable, inasmuch as, the Hon'ble Supreme Court in the case of ***Dilip (Dead) Through Lrs. –vs- Satish and Others*** reported in ***2022 SCC Online SC 810***, held that electricity is a basic amenity of which a person cannot be deprived. It further proceeded to hold 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. Applying the said decision of Hon'ble Supreme Court in the case of *Dilip (Dead)* (Supra) to the facts of the present case, it is seen that the factum of the petitioner and his family being in possession of the land since last 46 years not being disputed, they are to be reckoned as an occupier of the said plot of land and in possession thereof as on date. Accordingly, the petitioner would be entitled basing on such possessory rights to claim for being provided with an electricity connection.

8. Accordingly, the notice dated 05.11.2018 cannot be sustained and the same is set aside.
9. The APDCL authorities are directed to allow the petitioner to continue to avail the electricity connection, without fail, subject to payment of the dues that would be so calculated at periodical intervals as prescribed.
10. With the above observation and direction, the writ petition stands disposed of.

JUDGE

Comparing Assistant