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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment pronounced on : 18th September, 2017

+ W.P.(C) 5617/2015

RAJESH SHARMA Petitioner
Through Mr. Vivek Sharma, Adv.

versus

BSES YAMUNA POWER LTD. & ORS. Respondents
Through Mr. Naman Saraswant, proxy
counsel for BSES/R-1.

CORAM:
HON'BLE MR. JUSTICE A. K. CHAWLA

JUDGMENT

A.K. CHAWLA, J. (ORAL)

Instant petition has come to be filed seeking directions to the respondent no.1-BSES Yamuna Power Ltd. to install an electricity connection in a portion on the ground floor of property being no. 198/3A, Sri Ram Nagar, Shahdara, Delhi. What is the extent of the portion of the property in occupation of the petitioner, prayer (i) avers, as follows :

"issue direction/writ in the nature of mandamus to the respondent no.1 to install the electricity connection in the premises under occupation of the petitioner."

2. Petitioner claims to be in occupation as a tenant having been so inducted by one Ms. Santo Devi, who expired intestate and issueless, on 21.12.2008.

3. It is the own case of the petitioner that after the demise of Ms. Santo Devi, her nephew i.e. respondent no.2, entered into the premises and that, the respondent no.3, asserts to be another nephew and claims ownership to the property.

4. It emerges from the record that in relation to a purported Will dated 6.10.2008 allegedly executed by Ms. Santo Devi (since deceased), a probate case is pending and the respondent no.2 has also filed a suit for possession, recovery and mesne profit against Ms. Sunita Sharma, who is the wife of the instant petitioner. It appears that Ms. Sunita Sharma, who is the wife of the petitioner, was looking after and living with Ms. Santo Devi (Bua Ji), who was aged and ailing. After the death of Ms. Santo Devi, diverse litigations have ensued amongst the parties i.e. the petitioner, his wife Ms. Sunita Sharma, respondent nos.2 and 3, all asserting their own diverse rights in the property left behind by Ms. Santo Devi. In the counter affidavit filed on behalf of respondent no.1, the respondent no.1 has stated, as follows :

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4. without prejudice to the above, it is humbly submitted that the said purported application does not constitute an application seeking fresh electricity connection under Section 43 of the Electricity Act. Regard may be have to the explanation to Section 43(1) which provides that application for the purpose of this sub section means application complete in all respects in the appropriate form, as required by the distribution licensee, along with documents showing payment of necessary charges. The procedure and formalities for

grant of new connection is dealt with and provided under Delhi Supply Code & Performance Standards Regulations 2007. As per the said regulations, in case a connection is applied for in tenanted premises, the application should be accompanied amongst others, with the copy of the lease deed and No Objection Certificate from the landlord.

5. That contrary to the said stipulation, a perusal of the application of the petitioner would show that it does not even mention name of the landlord or details of the lease deed, much less any NOC from the owner of the premises. It is therefore respectfully submitted that the application dated 5.8.2014 is not and cannot be treated as an application seeking electricity connection as contemplated under provision of Section 43 of the Electricity Act 2003. Accordingly in absence of a complete and proper application, Section 43 of the Electricity Act cannot be invoked by way of Writ petition.

6. That besides there being no proof of tenancy in favour of the petitioner, the ownership of the premises in which connection is sought for, is also not established. As per the averments made in para 2 and 3 of the Petition itself, two separate proceedings (Civil suit no.401/09, and Probate case between Respondent no.2 and Respondent no.3) are going on before the Trial Court.

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Thus, according to the respondent no.1, the tenancy as also ownership are much in dispute and its regulations do not permit the grant of electricity connection to an occupant alike the petitioner.

5. Mr. Sharma, ld. counsel for the petitioner placing reliance upon the order of the Hon'ble Supreme Court in **(2011) 12 SCC 314 Chandi Khamaru Vs. Nayan Malik & Ors.**, contends that

any occupant of a premises is entitled to an independent electricity connection under Section 43 of the Electricity Act.

6. Sub-section (1) of Section 42 and sub-section (1) of Section 43 of the Electricity Act, 2003 are, as follows:

"42. Duties of distribution licensees and open access-

(1) It shall be the duty of a distribution licensee to develop and maintain an efficient co-ordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act.

43. Duty to supply on request-(1) Save as otherwise provided in this Act, every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply."

In the order (supra) relied upon by the Id. Counsel for the petitioner, in para 7 thereof, it is observed, as follows :

"7. It will be clear from sub-section (1) of Section 42 that every distribution licensee has a duty to develop and maintain an efficient co-ordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act. Sub-section (1) of Section 43 provides that every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply. These provisions in the Electricity Act, 2003 make it amply clear that a distribution licensee has a statutory duty to supply electricity to an owner or occupier of any premises located in the area of supply of electricity of the distribution licensee, if such owner or occupier of the premises applies for it, and correspondingly every owner or occupier of any

premises has a statutory right to apply for and obtain such electric supply from the distribution licensee."

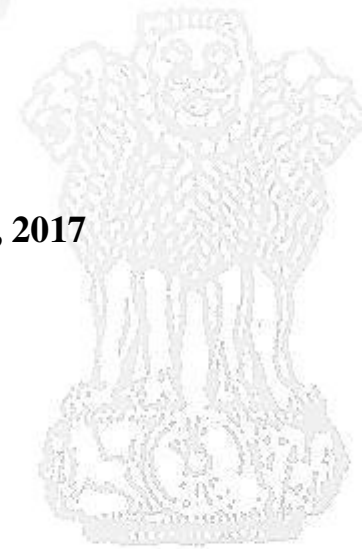
The order (supra) elaborates that it is the duty of every distribution licensee to give supply of electricity to the owner/occupier of any premises within its area. The order (supra), however, in my considered view, cannot be construed to connote that even an unlawful occupant would be entitled to demand an independent electricity connection. A right to occupy an immovable property, and, be entitled to independent electricity supply has to be a legal right to occupy a premises and it must prima facie, be so shown to the licensee, when an occupant of a property or a portion thereof, seeks an independent electricity connection. According to the petitioner, his wife has been serving Ms. Santo Devi (since deceased), who was his Bua Ji. On the demise of Ms. Santo Devi, the disputes have arisen amongst the petitioner and his wife on the one hand and the respondent nos. 2 and 3 asserting their own ownership rights either by way of the alleged Will or otherwise. Then, if the amenity of electricity supply was provided to the petitioner at the time of letting, and such amenity has come to be withheld unlawfully by any successor-in-interest, the petitioner would have an efficacious remedy to approach the Rent Controller, for the redressal of his grievances. In the given facts and circumstances, the mere averments in the writ petition that the petitioner was inducted as tenant in the subject premises, which is in dispute, it *ipso facto* does not invest a legal right to ask for an

independent electricity connection from the respondent no.1-the licensee to supply the electricity as contemplated under Section 43 of the Electricity Act. Suffice to say, there are seriously disputed questions of facts. This Court therefore, refrains to exercise its extra-ordinary jurisdiction to issue the Writ, prayed for, leaving it open to the petitioner to approach a Court of competent jurisdiction for adjudication of his rights and/or Rent Controller for redressal of his grievance, if any. Writ petition stands disposed off accordingly.

A. K. CHAWLA, J

SEPTEMBER 18, 2017

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