

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE
(Via Video Conference)

WPA 2789 of 2020

Ramjiban Kirtaniya
Vs.
The West Bengal State Electricity
Distribution Company Limited & Ors.

Mr. Gopal Chandra Ghosh
... For the petitioner

Mr. Rammohan Chattopadhyay
... For WBSEDCL

Mr. Bhaskar Chandra Manna
... For the respondent nos.3, 4 & 5

The petitioner claims to be a tenant in respect of a shop room situated at the ground floor of a two-storeyed premises standing on the northern side of the land comprised in Dag no.676, Mouza – 36 in village Kundipur, Post Office – Garapota, Police Station – Bongaon, District – North 24-Parganas (hereinafter referred to as the “said premises”). The petitioner says that the petitioner was originally a tenant under Sri Ramesh Chandra Mandal. The tenancy agreement is annexed to the writ petition. It is also the petitioner’s case that the original landlord had gifted the said premises to his wife and two married daughters, being respectively the respondent nos.5, 3 and 4. The petitioner says that the petitioner was enjoying electricity from a dedicated meter since inducted by the original landlord. After the alleged gift, the present owners have

mischievously disconnected the electric supply to the petitioner's shop room and, as such, the petitioner is not in a position to properly operate the shop room. The petitioner, therefor, has sought for a new electric connection at the said shop room but the same has not been given which resulted in filing of the present writ petition.

On behalf of West Bengal State Electricity Distribution Company Limited (hereinafter referred to as "WBSEDCL"), it is submitted that it was and still is ready and willing to give a separate connection to the petitioner at the said shop room from the nearest pole by affixing the meter inside the shop room upon payment of all necessary cost and expenses. But due to the resistance from the side of the respondent nos.3, 4 and 5 (private respondents), neither the meter can be installed nor a connection be given to the petitioner.

On behalf of private respondents, it is submitted that the petitioner has been regularly threatening the said private respondents in order to intimidate the private respondents and grab the shop room. The private respondents have initiated criminal proceedings as against the petitioner and have also filed a suit for declaration and injunction to restrain the petitioner from getting a new electric connection. The private respondents say that during the pendency of the said suit, no order should be made by this Court as the same may render the suit infructuous.

The submission made on behalf of private respondents is denied by the petitioner. The petitioner says that in order to evict the petitioner without due process of law, the private respondents have indulged in various acts and the disconnection of electricity is one of such acts. The suit has been mischievously filed after the petitioner deposited the money in terms of the quotation raised by WBSEDCL pursuant to petitioner's application for new connection only to further harass the petitioner. The pendency of the suit, therefor, cannot stand in the way of the petitioner getting a new metered connection.

After considering the submission made by the respective parties and the materials on record, I find that the petitioner is in settled possession of the shop room in question. The petitioner's tenancy has not yet been terminated. Assuming without admitting that the same had been terminated, the status of the petitioner will be that of a statutory tenant or at the least, a tenant at sufferance. The petitioner's entry to the said shop room is rightful. Even if the petitioner is holding on to the shop room, say in an unauthorised manner, the petitioner's status at the least be that of a trespasser. It is settled position of law that a trespasser unless evicted by due process of law is entitled to electric connection. The constitutional mandate also allows the petitioner to enjoy electricity at the shop room. WBSEDCL, as a licensee, is also statutorily bound to give the petitioner a new connection.

That apart and in any event, granting a new connection will neither create any new right nor will abridge or extinguish any existing right of the petitioner vis-à-vis the private respondents in respect of such shop room. The private respondents have also not been able to make out any case which disentitles the petitioner from getting a new electric connection at his shop room.

In the facts and circumstances as aforesaid, I direct WBSEDCL to give connection to the petitioner directly from a nearby pole by installing a meter at the shop room in question within 12th February, 2021, subject to the petitioner paying all cost and charges and complying with other statutory requirements, save and except, producing a 'no objection' and/or 'way leave' from the private respondents.

It is expected that the private respondents shall cooperate with petitioner and the officials of WBSEDCL at the time of granting a new connection to the petitioner by installing a meter at the shop room in question.

The Officer-in-Charge, Bongaon Police Station, District – North 24-Parganas, is directed to ensure that there is no breach of peace in and around the said premises at the time when the officials of WBSEDCL execute the work for giving a new electricity connection to the petitioner.

The petitioner and WBSEDCL shall, well in advance, inform the Officer-in-Charge of Bongaon Police

Station about the date and tentative time of visiting of the officials of WBSEDCL for the purpose of giving new connection to the petitioner.

It is made clear that I have not gone into any dispute inter se between the private respondents and the petitioner vis-à-vis the right, title and interest of the shop room and/or in respect of the landlord tenant relationship. The observations made hereinabove are only for the purpose of deciding the instant writ petition.

Nothing further remains to be adjudicated in this writ petition. The same is disposed of accordingly without any order as to costs.

Since I have not called for any affidavits, allegations made in the writ petition are deemed to have not been admitted.

Urgent photostat certified copy of this order, if applied for, is to be given to the parties, upon compliance of necessary formalities.

(Arindam Mukherjee, J.)