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25.06.2021
TN

CO No.758 of 2021

(Via video conference)

Smt. Sabita Barik
Vs.
Sri Subrata Maity and others

Mr. Tanmoy Mukherjee,
Ms. Shila Sarkar

.... for the petitioner

Mr. Uday Sankar Bhattacharya

.... for the proforma opposite parties

Affidavit-of-service filed in court today be
kept on record.

It appears that service was previously
effected on the opposite parties. Even thereafter,
when a copy of the revisional application was
sought to be served on the learned advocate for the
opposite party no.1 in the court below, the said
advocate refused to accept the same, which has
been specifically mentioned in the affidavit-of-
service filed today.

Since both the petitioner and the proforma opposite parties are represented in court today, there is no other option but to dispose of the matter on merits in the absence of the opposite parties.

As recorded in the order dated June 23, 2021 passed in the revisional application, there is a dispute regarding whether the petitioner is entitled to take electric connection through underground cable beneath a passage adjacent to plot no.2237 (of which the petitioner is the owner), in view of the specific objection having been taken by the opposite party no.1 as regards the petitioner having no right to do so.

Learned counsel appearing for the proforma opposite parties, in his usual fairness, submits that there is no impediment in the CESC giving connection to the property-in-question in the event there is an order of the court.

It appears from the materials on record and the submissions of the parties attending the hearing, that previously a decree was passed in a suit, from which an appeal was preferred. The appellate court ultimately granted a partial decree, thereby declaring the title of the petitioner's husband in respect of plot no. 2237, although there was a deemed refusal of the other relief sought by

the said spouse of the petitioner, being declaration regarding the right of user and enjoyment of the adjacent passage.

In the present suit, the opposite party no.1 has specifically taken an objection to underground cable being drawn beneath the passage-in-question, on the allegation that the said passage, covered by Schedule-C of the suit, is an encroached portion of Schedule-B, which belongs to the opposite party no.1. On the contrary, the petitioner contends that Schedule-C is a part of the Schedule-A property, which belongs to the petitioner's spouse.

That apart, it is submitted that another electric connection has already been taken beneath the passage-in-question to the petitioner's plot, that is, plot no.2237 and, as such, there cannot be any impediment in granting the petitioner a similar electric connection.

Keeping in view the respective contentions of the parties, although there was a previous refusal of the relief of declaration of right of user and enjoyment of the passage against the petitioner's spouse, the digging and filling up of the passage for a limited time for the restricted purpose of installing underground electric connection does not

amount to user or enjoyment of a permanent nature, but is absolutely necessary, more so since electricity is an indispensable resource, which every lawful owner has a right to enjoy in his/her property.

In view of the aforesaid observations, CO No.758 of 2021 is allowed, thereby setting aside the impugned orders of both the courts below directing *status quo* to be maintained by both parties in respect of the nature, character and possession of the suit property.

The petitioner is permitted to take electric connection over the disputed pathway, irrespective of the ownership thereof, which is the subject-matter of dispute in the suit, to which no hindrance shall be put up by the opposite party no.1. However, the proforma opposite parties shall give such connection upon undertaking necessary digging and filling up work on the disputed passage within a fortnight, at the most, from the commencement of such work. Prior to commencement of such work, the petitioner as well as the proforma opposite parties shall give specific notice, at least one week in advance before commencement, to the opposite party no.1 as regards such work on the passage.

It is further made clear that, during the progress of the work, at no point of time the ingress and egress of the opposite party no.1 over the pathway in its entirety shall be obstructed. At all stages of the work, at least a narrow passage has to be kept open for being used by the opposite party no.1 without any hindrance to his ingress and egress to his own property on plot no.2237.

The petitioner shall communicate this order to the opposite party no.1 as well as the court below, along with a server copy of this order, at the earliest.

All parties shall act on the communication of the learned advocate(s) and such server copy, without insisting upon prior production of a certified copy thereof.

The proforma opposite parties shall be free to seek police assistance to implement the above work, if necessary and, if so approached, the local police station shall render all possible assistance in conduct of such work by the CESC.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)