

25
21.12.2021.
mb

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

W.P.A. No. 8379 of 2021

**Smt. Ratna Rozario
-vs.-
Calcutta Electric Supply
Corporation Limited & Ors.**

Mr. Soumyajit Das Mahapatra,
Mr. Suprito Das
...for the petitioner

Mr. Ram Chandra Guchhait
...for the CESC Limited

Mr. Manoj Kumar Singh,
Mr. Abhisek Guha,
Mr. J. Shaw
...for the respondent nos. 5 to 9

The grievance of the petitioner is that, due to hindrance created by the private respondents, the CESC personnel are not being able to give electric connection to the petitioner pursuant to the petitioner's application for the same.

Learned counsel contends that the pendency of a suit in respect of the premises-in-question cannot affect the legal right of the petitioner to have an electric connection, in view of the petitioner being in occupation of the shop room-in-question.

Learned counsel appearing for the CESC Limited contends that the CESC personnel were

hindered by a lock affixed at the entry point to the existing meter board location, for which the CESC personnel could not give the new connection to the petitioner.

Learned counsel appearing for the private respondents submits that, apart from pendency of a civil suit instituted by the private respondents, *inter alia*, for declaration questioning the ownership of the petitioner as well as for ancillary reliefs of permanent injunction, etc., other criminal cases are also pending between the private parties.

It is further submitted by learned counsel for the private respondents, placing particular reliance on the schedule 'B' of the purchase deed of one of the private respondents by way of example, that all the private respondents were given proportionate share of land and common areas in the premises-in-question. However, contrary to such clause in the deed, the developer has subsequently transferred the shop room-in-question in favour of the petitioner, thereby permitting a commercial establishment to be run from an otherwise wholly-residential accommodation. It is submitted by learned counsel for the private respondents that such change of nature of user is contrary to law and, as such, an objection has been filed before the appropriate authorities challenging the mutation of the petitioner's premises as a 'shop room'.

It appears from the materials-on-record that, undoubtedly, the validity of the conferment of title by virtue of the transfer in favour of the petitioner has been questioned by the private respondents before various forums, including the civil court. However, mere pendency of such proceedings cannot vitiate the right of the petitioner, as an occupant of the premises, legal or otherwise, vested under Section 43 of the Indian Electricity Act, 2003, which is ancillary to the right to life enshrined in the Constitution of India.

It is a well-settled proposition of law that even illegal occupiers (without commenting upon the legality of the present petitioner's title) are entitled to get electric supply to their occupied premises.

Moreover, at this juncture, since the CESC personnel have no objection to give new electric connection to the petitioner, it does not lie in the mouth of the private respondents to say that electric connection cannot be given as per the extant law. However, there might have been justification in the apprehension expressed by learned counsel for the private respondents as regards the privacy of the private respondents being hampered and/or there arising a danger to the life and limb of the other residents of the premises in the event further electric connections are given from the existing electric meter board position,

inasmuch as the safety and security of the private respondents are concerned.

However, it is submitted by learned counsel for the CESC Limited that although the new connection will be given to the shop room of the petitioner, a new meter in the name of the petitioner may have to be installed at the existing electric meter board position.

Keeping the rights of the parties on balance, unless and until the transfer in favour of the petitioner is set aside by any competent court of law, the petitioner, even as an occupant of the premises, has a right under Section 43 of the Indian Electricity Act, 2003 to get electric connection. It is only for the CESC personnel to ascertain the feasibility of giving such new connection from the existing meter board position. Since the CESC Limited is of the clear opinion that there is no such impediment, there is no valid ground for the private respondents for putting up resistance to the new electric connection being given to the petitioner.

Accordingly, W.P.A. No. 8379 of 2021 is disposed of by directing the CESC Limited to give a new electric connection in the name of the petitioner at the existing meter board position of the premises-in-question, subject to ascertainment of the feasibility of giving such connection as well as subject to compliance of all due formalities by the petitioner, as expeditiously as possible, preferably within a week from date.

In the event any hindrance is offered unlawfully by the private respondents and/or their men and agents, the respondent no. 4, that is, the Officer-in-Charge, Dumdum Police Station, shall give adequate police protection to the CESC personnel, if so approached, at the cost of the petitioner.

It is made clear that in the event the CESC personnel face any obstruction or hindrance in having access to the existing electric meter board position, the police personnel will be at liberty to break open any padlock or other hindrance to such access at the time of giving new connection to the petitioner.

However, needless to say, none of the above observations, nor the grant of new connection, if given to the petitioner, shall *ipso facto* create any special equity or privilege in favour of the petitioner. That apart, the present observations have been made only in the context of disposal of the writ petition and shall be subject to appropriate orders being passed by the civil court, which is in seisin of the matter, as well as any other legal authority, if so vested with such authority under the law to decide.

All parties shall act on the server copy of this order, without insisting upon prior production of a certified copy thereof.

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 of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)