

8th December,
2021
(AK)
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W.P.A 18277 of 2021

Mr. Naresh Kumar Agarwal
alias Dinodiya
Vs.
The CESC Limited & Others

Mr. Suddhasatva Banerjee
Mr. Shaswat Nayak
Mr. Anirudha Agarwala
Mr. Amit Agarwalla
...for the petitioner.

Mr. Debanjan Mukherjee
...for CESC.

Mr. Saptansu Basu
Mr. Koushik Kundu
Ms. Mrinalini Majumder
...for the respondent no.3.

Affidavit-in-opposition filed in court today be kept
on record.

The petitioner contends that, despite having applied
for a new electric connection, the CESC Limited is not
being able to give such connection at the premises-in-
question, in view of the obstruction created by the private
respondent.

The learned Senior Advocate appearing for the
private respondent contends that there is a subsisting
attachment order against the petitioner, passed in a title
suit bearing Title Suit No.23664 of 2014.

In view of the petitioner having failed to comply with
an order of the Civil Court dated February 25, 2021,

inasmuch as the amount directed to be paid was not paid, a further order was passed on March 12, 2021 by the Civil Court whereby it was recorded that such condition of the order dated February 25, 2021 had not been complied with and the formal order of attachment might be proceeded pending the application of the plaintiff filed on March 12, 2021.

It is further contended by the learned Senior Advocate appearing for the private respondent, by placing reliance on a co-ordinate Bench judgment of this court reported at *AIR 1973 Cal 432 (Purna Chandra Basak vs. Daulat Ali Molah)*, in particular paragraph no.8 thereof, that attachment may not necessarily be of the property itself but of the right, title and interest of the debtor in the property at the date of the attachment.

The learned senior Advocate submits that, such proposition having been laid down by this court, the rights of the petitioner in respect of the property, including the right to get an electric connection in the petitioner's own name, no longer exist in view of the attachment.

Learned counsel appearing for the CESC Limited argues that, in view of the resistance offered, the CESC could not take an appropriate inspection in respect of the premises.

It is thus submitted that without a further inspection and compliance of all formalities under law

and the extant regulations, the new connection cannot be given.

It is further submitted by learned counsel for the CESC that for the said purpose, a new Offer Letter has to be given by the CESC upon such further inspection, which would bind the applicant/petitioner to certain terms and conditions.

Be that as it may, the technical difficulties pointed out by the CESC Limited cannot come in the way of the petitioner getting an electric connection.

In the judgment of a coordinate Bench of this court, reported at *AIR 2008 Cal 47*, the scopes of Section 43 of the Electricity Act, 2003 and Article 21 of the Constitution were considered and it was held that any ‘*occupier*’ under Section 43 is entitled to claim electricity connection so long as he remains in possession of the property-in-question.

That apart, the proposition sought to be projected by the learned Senior Advocate appearing for the private respondent is not borne out by the judgment cited by the learned Senior Advocate.

In paragraph no.8 of the same, the learned Single Judge was pleased to hold merely that the attachment may not necessarily be of the property itself but of the right, title and interest of the debtor in the property at the date of the attachment.

It was further held that, a creditor can only attach the right, title and interest of his debtor on the date of the attachment and on principle, his attachment cannot confer upon him any higher right than the judgment-debtor had at the date of the attachment.

If a person having a contract of sale in his favour has such pre-existent right, the learned Single Judge held that the attachment could not be binding upon him.

It is further mentioned in the said paragraph of the cited report that at the time of attachment a right accrues to receive the whole or a part of the price on completion of the same, which clearly indicates that the observations made by the learned Single Judge were on an entirely different premise than the present case.

The learned Single Judge was discussing the scope of accrual of rights by virtue of an attachment. However, the compass within which the judgment was rendered on facts as well as on law, was on a limited aspect which does not pertain to the right to have electricity under Section 43 of the Electricity Act, 2003 and/or the fundamental right guaranteed to the petitioner under Article 21 of the Constitution of India.

In the circumstances of the present case, the attachment order does not have the legal effect of curtailing the right of the petitioner, as an occupier under Section 43 of the 2003 Act, to apply for electricity.

If such an application has been made and the petitioner complies with all formalities, it is the duty of the distribution licensee to give such connection irrespective of the objection raised by the private respondent.

Accordingly, WPA 18277 of 2021 is disposed of by directing the CESC Limited to hold another inspection to ascertain the feasibility of a new connection being given to the petitioner and thereafter to issue an Offer Letter to the petitioner indicating the requisite terms and conditions as well as for payment of the bills.

Such inspection shall be concluded by the CESC officials within a fortnight from date and the Offer Letter shall be issued within one week thereafter to the petitioner.

Subject to compliance of all formalities, the CESC Limited shall, as expeditiously thereafter as possible, give such electric supply to the petitioner, provided the petitioner adheres to the terms and conditions of the Offer Letter.

In the event any obstruction is created to the officials of the CESC Limited in holding such inspection and/or giving new connection at the premises-in-question, the CESC officials will be at liberty to approach the local police station for adequate police assistance in order to carry out such inspection and to effect such connection.

If so approached, the Officer-in-Charge of the local police station shall provide adequate assistance to the CESC officials, at the cost of the petitioner, to facilitate the inspection as well as giving the electric connection at the existing meter board.

If necessary, the police personnel will be free to break open any padlock or remove any other hindrance which may come in the way of the CESC officials taking an inspection and giving a connection to the existing electric meter board.

The parties as well as all concerned, including the police, shall act on the written communication of the learned advocates for the parties, accompanied by server copies of this order, without insisting upon prior production of a certified copy.

There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)