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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 20982 of 2019

Sk. Asraf Ali
Vs.
State of West Bengal & Ors.

Mr. Prasanta Kumar Banerjee,
Mr. Sib Sankar Bandopadhyay
Ms. Krishna Yadav
... For the petitioner.

Mr. Srijan Nayak,
Ms. Rituparna Maitra,
Mr. S. S. Koley
... For WBSEDCL.

Mr. Kajal Roy
... For the respondent no.6

The petitioner had applied for a new electricity connection at his premises, situated at 72/A/4/A, Mallick Para Lane, Ward No.5, Serampore, Hooghly (hereinafter referred to as the said premises). The petitioner says that despite fulfilling all requirements of West Bengal State Electricity Distribution Company Limited (in short, WBSEDCL), the licensee, the petitioner has not been given the connection because of the resistance from the respondent no.7 (private respondent). The petitioner, therefor, has been compelled to file the present writ petition seeking a new connection from WBSEDCL.

On behalf of WBSEDCL, it is submitted that there is an existing pole just in front of the petitioner's premises wherefrom several persons are enjoying electric supply. The petitioner can be conveniently given a connection from the said pole, but for the objection and resistance from the private respondent, connection could not be given.

On behalf of the private respondent, it is submitted that on the northern side of the premises of the private respondent there is a 4 feet strip of land, which is tried to be shown by the petitioner as a common passage. The said strip of land is an exclusive property of the private respondent in view of an ex parte decree dated 7th February, 2017 passed in Title Suit, being T.S. No.200 of 2014.

On a perusal of the plaint filed in T.S. No.200 of 2014 made over to the Court by the advocate for the private respondent, it appears that the petitioner was not a party to the said Title Suit No.200 of 2014.

The private respondent says that during pendency of T.S. 200 of 2014 but before the ex parte decree was passed the owners of some adjacent plots of land by showing the 4 feet wide strip of land as a common passage have taken water connection and got electric poles erected thereat for getting electric supply. The private respondent, therefor, was

compelled to file a subsequent suit being Title Suit No.531 of 2018, wherein an ex parte ad interim order of injunction was passed on 21st December, 2018, directing the plaintiff and the defendants therein to maintain status quo as of that date with regard to the nature, character and possession of the said 4 feet wide passage lying on the contiguous north of 'Ka' schedule suit property of the plaintiff till 8th January, 2019. The private respondent says that the said ad interim order of injunction has been extended from time to time and is still subsisting. Relying upon the decree in the first suit and the interim order in the second suit, the private respondent says that the petitioner should not be given electric supply by WBSEDCL from the existing pole on the 4 feet wide passage on the northern side of the premises of the private respondent.

After considering the materials on record and the submissions made by the parties, I find that the grounds of objection made out by the private respondent are untenable in law. In the first suit, as indicated hereinabove, the petitioner was not a party. The decree passed therein is, as such, not binding upon the petitioner. In the second suit, the petitioner was originally not a party but is said to be made a party subsequently. The ex parte ad interim order of injunction of status quo was passed at a time when

the petitioner was not a party to the suit. That apart and in any event the order of status quo cannot prevent the petitioner from getting an electric connection and also does not restrain WBSEDCL from giving a connection to the petitioner from the existing pole on the 4 feet wide passage. No new pole is being erected which may be contended by the private respondent to be changing the nature and character of 4 feet wide passage. In any event, the entry of the officials of WBSEDCL through the said 4 feet wide passage to access the electric pole already existing thereat cannot also be prevented by the private respondent by dint of the order of status quo or the decree.

The other issue raised by the private respondent is that the petitioner having knowledge of the second suit, the injunction application filed in the said second suit wherein the petitioner is a party and the interim order passed therein has suppressed such fact in the writ petition.

This amounts to suppression of material fact, as non-disclosure of the suit, the injunction application and the order of status quo would have altered the decision of this Court in the present writ petition had the same been not pointed out by the private respondent. It appears from the certified copies of the order passed in the second suit the

petitioner being defendant no.7 therein has appeared and contested the injunction application. The petitioner was, therefor, aware of the suit and the interim order passed therein but did not disclose the same.

The writ petition is, therefor, liable to be dismissed on the sole ground of suppression of material fact and is accordingly dismissed.

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

(Arindam Mukherjee, J.)