

**02.02.2021**  
**Sl.No.3**  
(PP)

IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
APPELLATE SIDE

**WPA 21544 of 2019**

**Sandip Kumar Pasi & Ors.**  
**Vs.**  
**West Bengal State Electricity Distribution**  
**Company Limited & Ors.**

Mr. Amal Krishna Saha,  
Mr. Debnath Mahata

....for the petitioners.

Mr. Amitabh Shukla,  
Mr. Prakash Ch. Pandey

....for WBSEDCL.

Pursuant to the order dated 14<sup>th</sup> January, 2021,  
the respondent nos.3, 4 and 5 are served. The affidavit  
of service filed in this regard is taken on record.

The private respondents despite service remain  
unrepresented.

By an order dated February 15, 2012 passed in  
W.P. 2676 (W) of 2012 (Smt. Tara Devi v. The State of  
West Bengal & Ors.) the following direction was given:-

“For these reasons, I dispose of the WP ordering  
as follows. Within a fortnight from the date the  
private respondent complies with the formalities  
and pays requisite charge the licensee shall remove  
the existing pole and erect a new pole without  
using for any purpose any part of any wall of the  
petitioner’s residential building. The private  
respondent shall bear the entire expense, and if  
necessary the licensee will be free to take police  
help at the private respondent’s expense. Erection  
of the new pole will however be subject to the result  
of the suit filed by the petitioner. No costs.”

The petitioners say that the suit referred to in the said order dated February 15, 2012 has now been decreed. The operative portion of the decree dated 27<sup>th</sup> February, 2019 passed in Title Suit No.217 of 2010 (Kusum Passi & Ors. Versus Tapeswari Passi @ Chowdhury & Ors.) is as follows:-

**“ORDERED**

that the instant suit be and the same is decreed on contest against the defendants without costs.

It is declared that plaintiffs are the owner of the suit passage as described in Schedule D of the plaint.

Defendants are hereby restrained from creating any disturbance in peaceful enjoyment of the plaintiffs over the D schedule passage.”

The petitioners say that Schedule ‘D’ property mentioned in the decree dated 27<sup>th</sup> February, 2019 is the passage on which the electricity pole was erected pursuant to the order dated February 15, 2012 passed in W.P. 2676 (W) of 2012. By virtue of the decree, the petitioners now pray for removal of the electricity line of Om Prokas Pasi @ Chowdhury (respondent no.3) and Shiv Shankar Choudhury (wrongly typed therein as it should be Sew Sankar Pasi), the deceased father of respondent nos.4 and 5. The petitioners have made a representation before the concerned Station Manager of West Bengal State Electricity Distribution Company Limited (in short WBSEDCL), being the respondent

no.2 in the instant writ petition in this regard. The petitioners say since no step has been taken by the concerned Station Manager, the petitioners have been compelled to file the instant writ petition.

On behalf of WBSEDCL, it is submitted that a site inspection has been conducted by the respondent no.2. There is a possibility of altering the route by which electricity is supplied to the respondent nos.3, 4 and 5 to remove the electric pole from the land in respect of which the petitioners have got a decree. However, the private respondents are not agreeable to change in the route of the electric line and as such, no further steps would be taken.

On a perusal of the decree, it appears that there is no direction for removing the existing pole from the place wherein it is presently located. The existence of the pole cannot be also construed to be an act infringing the right of the petitioner over the strip of land in question on a plain reading of the decree. Even if the strip of land in question pursuant to the decree is enjoyed by the petitioner exclusively, WBSEDCL as a licensee can utilise the same to maintain the existing pole.

Since the private respondents are absent despite service, the matter is taken up in their absence and the following order is passed:-

- (i) The Station Manager (respondent no.2) shall, within a period of three weeks from date, call the petitioners and the private respondents for a hearing and shall make an endeavour, if possible, to change the route through which electricity line is drawn for giving connection to the respondent nos.3, 4 and 5 so that the electric pole in question can be removed and give supply to the said respondents by an alternative route, if possible, without disturbing any others property.
- (ii) The respondent no.2 shall dispose of the matter by a reasoned order after giving the parties a reasonable opportunity of hearing.
- (iii) The respondent no.2 shall, within ten weeks from date, pass his reasoned and communicate the same to the parties within a period of seven days from passing of the said order.

It is made clear that the decision of the concerned Station Manager shall be final and binding on the parties. In the event, the alternative route is not feasible, the pole should remain in the position it is located at the present.

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.

The findings as aforesaid are only for the purpose of deciding the instant writ petition and will neither abridge or extinguish any right of the petitioners so as to the strip of land in question.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertakings.

**(Arindam Mukherjee, J.)**