

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.17983 of 2021**

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Anuradha Kumari, W/o Rajesh Kumar, Resident of Mohalla-Ward No. 27,  
Majhauriya, Chak Abdul Wahid, Mahmmadpur Kazi, Muzaffarpur, Bihar-  
842001.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Department of Energy, Bihar, Patna.
2. The Chairman, North Bihar Power Distribution Company Ltd. Vidyut Bhawan Baily Road, Patna, Bihar.
3. The Electric Executive Engineer, Electric Supply Division, Muzaffarpur.
4. The Junior Engineer Electric Supply Division Maripur, District-Muzaffarpur.
5. The Assistant Electric Engineer, Electric Supply Sub-Division Maripur, District-Muzaffarpur.
6. M/S Muzaffarpur Vidyut Vitran Ltd., a frenchise of North Bihar Power Distribution Company Ltd. Earlier known as Essel Vidyut (Muzaffarpur) Ltd. through its authorized representative having office at Muzaffarpur, Vidyut Vitran Ltd. Near Circuit House, Power House Chowk, Muzaffarpur-842001.
7. Mrs. Poonam Prakash, D/o Late Bhola Prasad, W/o Anand Kumar, resident of Mohalla-Chak Abdul Wahid, Majhauria Road, Muzaffarpur, P.S.-Kazimuhammadpur, District-Muzaffarpur, Corresponding Address-C/o Sri Anand Kuari, Telecom Engineer Colony, P.O.-Manoharpur Kachuara, Nayachak, Patna-800016.

... .. Respondent/s

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**Appearance :**

|                          |   |                                       |
|--------------------------|---|---------------------------------------|
| For the Petitioner       | : | Mr Ranjan Kumar Dubey, Advocate       |
| For the Respondent State | : | Mr Kinkar Kumar ( SC-9 )              |
| For Electricity Board    | : | Mr Vinay Kirti Singh, Senior Advocate |

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH**

**and**

**HONOURABLE MR. JUSTICE MADHURESH PRASAD**

**C.A.V. JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)**

**Date : 07-02-2022**

The dispute in this writ application filed under  
  
Article 226 of the Constitution of India relates to denial by the



North Bihar Power Distribution Company Limited ('NBPDC' for short) to give fresh electricity connection in favour of the petitioner in the house situate over holding No. 336/359, Khata No. 433, Plot No. 473, Ward No. 27, Majhauria Chak Abdul Wahid, Muzaffarpur.

2. Admittedly, the house was in the name of one Sita Devi, in whose name there was an existing electricity connection. Said Sita Devi is no more. It is not in dispute that respondent No. 7 is the daughter of late Sita Devi.

3. It is the petitioner's case that she is the occupier of the said premises under a registered sale deed executed by late Sita Devi, nearly one and half months before her demise. In a judgment rendered on 23.11.2019, by the learned Sub Judge-XIV, Muzaffarpur, in Title Suit No. 371 of 2011 (Poonam Prakash Vs. Anuradha Kumari and Ors.), the sale deed said to have been executed by late Sita Devi in the favour of the petitioner, has been declared to be fraudulent and accordingly, the same has been set aside. A copy of the judgment in Title Suit No. 371 of 2011 has been brought on record by way of Annexure-6 to the reply filed on behalf of the petitioner to the counter affidavit filed on behalf of the NBPDC. It is the petitioner's case that a First Appeal has been filed against the



judgment and decree of the Trial Court registered as F.A. No. 27 of 2020, which is pending before this Court. The date of death of Sita Devi has been mentioned as 15.03.2010 in the judgment of the Trial Court in Title Suit No. 371 of 2011, though the date has not specifically been mentioned anywhere in the writ petition. It is the petitioner's case that there was electricity bill due to the tune of Rs. 44,767/- (Forty-Four Thousand Seven Hundred Sixty Seven) against the connection in favour of Sita Devi because of which the electricity supply was disconnected on 07.01.2020. It has been stated in the writ petition that on an assurance given by the officials under NBPDC, the petitioner had deposited Rs. 25,000/- (Twenty Five Thousand) against the said arrears, for reconnection of electricity supply, and accordingly, the connection was resumed but again it has been disconnected on 05.02.2020 on account of the remaining dues of Rs. 21,813/- (Twenty One Thousand Eight Hundred Thirteen). It is the petitioner's case that the electricity supply was not disconnected because of the aforesaid due amount, rather at the instance of respondent No. 7, who had claimed the title over the premises based on the judgment and decree passed in Title Suit No. 371 of 2011.

4. It would be apt to notice here that, it is the



petitioner's own case as set up in the present writ application that, she did not apply for a new electricity connection soon after the execution of the sale deed in her favour nor after the death of Sita Devi in 2010 itself. The application which the petitioner has made for electricity connection is dated 07.03.2020; evidently, more than a year after the judgment and decree was passed in Title Suit No. 371 of 2011.

5. It is the petitioner's case that, since the premises in question is in her possession, which is evident from the judgment and decree of the title suit also, she is the occupier of the house and, therefore, she has a right to get electricity connection.

6. By a communication dated 22.06.2020, made to the petitioner by the Junior Engineer, Electricity Supply Division, Maripur, the petitioner has been informed that her application for giving fresh electricity connection dated 13.02.2020, shall be considered after obtaining guidelines from the headquarters. There is another communication dated 15.03.2020, made by the Junior Electrical Engineer, Electric Supply Sub-Division, Maripur, addressed to the petitioner asking her to produce documents in support of her title over the premises to ensure providing electricity connection.



7. The petitioner is seeking quashing of the said communication dated 13.02.2020 wherein it has been mentioned that the power supply to the premises is disconnected because of the dues against the electricity bill of Rs. 21,813/- (Twenty One Thousand Eight Hundred Thirteen). In our considered view, the said letters dated 15.03.2020 and 22.06.2020, are neither orders nor do they contain any decision adverse to the petitioner's interest. The challenge to the said communications dated 15.03.2020 and 22.06.2020, is misconceived in the Court's opinion.

8. There is a third prayer made in the writ petition for a direction to the respondents to grant/issue new electricity connection to the petitioner forthwith on her application dated 07.03.2020, genuineness of which we need to consider in the light of facts admitted, and the stand taken on behalf of the NBPDCCL. This is to be noted that when this case was taken up on 23.12.2021, this Court had noticed the submission advanced on behalf of the petitioner, referring to Rule 4(9) of the Electricity (Rights of Consumers) Rules, 2020, which states that a licensee can not demand more documents of the proof than mandatorily required under the said provision. The Court had asked the respondents NBPDCCL, to deal with this aspect of



the matter, while filing their counter affidavit.

**9.** A counter affidavit has been filed on behalf of the NBPDCCL. It has been stated in the said counter affidavit that the expression “Occupier” has been defined under Rule 2(1)(k) of the Electricity (Rights of Consumers) Rules, 2020, (‘the Rules’ for short) to mean owner/tenant/person in occupation of the premises where electricity is used or proposed to be used. Section 43(1) of the Electricity Act, 2003, casts a duty on every distribution company/licensee, on an application by the owner or occupier of any premises to give supply of electricity to such premises within one month after receipt of “application” requiring such supply. In the explanation to Section 43, “application” has been defined as “application complete in all respects in the appropriate form”, as required by the distribution licensee, along with documents showing payment of necessary charges and other compliances.

**10.** Reference has been made to the provisions under Bihar Electricity Supply Code, 2007 (‘Supply Code’ for short), framed by the Bihar Electricity Regulatory Commission, in compliance with Section 50 of the Act whereunder the word “occupier” has been defined in Sub-clause 2 (i) (gg) of the Code as the owner or person in occupation of the premises



where electric energy is used or proposed to be used. Reliance has been placed in the counter affidavit on Chapter 4. I of the Supply Code, which provides, *inter alia*, that if there are arrears of electricity dues against the owner or occupier or tenant of any premises as a consumer, a new connection shall not be denied to the subsequent owner/occupier. It is the case of the respondents that, though the petitioner is claiming herself to be the occupier of the premises, she is not furnishing the details showing the circumstance in which she is occupying the premises, and further that, admittedly, there are outstanding dues against the electricity connection in the said premises. Reliance has also been placed on Clause 4.16 of the Supply Code, which casts a duty on the licensee to verify the application or documents at the time of receipt of the application.

**11.** It has further been stated in the counter affidavit that Clause 4.9 of the Supply Code merely lays down a guideline for grant of electricity supply to the consumer on the production of two mandatory documents, namely,

- (a) Identity proof,
- (b) Proof of the applicant's ownership or occupancy  
over the premises over which a new connection



is being sought.

**12.** Further, relying on Clause 4.13 (a) of Bihar Electricity Supply Code, it is the case of the NBPDCCL that a consumer is under obligation to furnish documents mentioned therein with the application for giving electricity connection. It is the case of the NBPDCCL that the petitioner has so far not been able to establish her ownership or her rightful or lawful occupancy in respect of premises in question.

**13.** Mr. Ranjan Kumar Dubey, learned counsel appearing on behalf of the petitioner has submitted that it cannot be disputed that the petitioner is occupying the premises in question as to the Trial Court, in its judgement in Title Suit No. 371 of 2011, has directed the petitioner to vacate the suit property. He contends that Sita Devi had executed the sale deed in the petitioner's favour based on which she acquired title and possession over the said premises. Secondly, Mr. Rajesh Kumar, the petitioner's husband was adopted as a son by late Bhola Prasad, the late husband of the said Sita Devi and thus, the petitioner is the daughter-in-law of late Sita Devi.

**14.** In such circumstances, he contends, it is unreasonable for the NBPDCCL to deny electricity connection on the ground that he is not a lawful occupier. In any view of



the matter, the question whether the petitioner is in rightful possession and has title over the premises in question is sub-judice and yet to be decided by this Court in the First Appeal. He has relied on decisions of this Court dated 03.05.2017 rendered in ***CWJC No. 2963 of 2017 (Ashok Kumar Vs. The Principal Secretary, Department Energy and Ors.)***, dated 11.04.2014 in ***CWJC No. 181 of 2014 (Suresh Chaudhary Vs. The Bihar State Power Holding Company Ltd. and Ors.)***. Reliance has also been placed on the Division Bench decision of Calcutta High Court in the case of ***Jai Narayan Patel Vs. Sanboth Chakraborty*** reported in ***2012 (3) CHN 548***, in support of his case. Reliance has also been placed in another decision in the case of ***Bihar State Electricity Board Vs. Bihar State Human Rights Commission*** reported in ***2012 (3) PLJR 882***, to contend that denial of electricity supply is violative of the right to life guaranteed under Article 21 of the Constitution of India.

15. From the judgment in the title suit, it appears that the contesting defendants had set up both the stands in their defence. According to them, the petitioner was in occupation of the premises in question based on the sale deed executed in her favour and, the petitioner's husband was adopted as their son



by Bhola Prasad and Sita Devi.

**16.** Mr Vinay Kirti Singh, learned Senior Counsel appearing on behalf of the NBPDCCL, *per contra*, would argue that the petitioner cannot be said to be a lawful occupier of the premises in question. He contends that the petitioner has failed to furnish proof of ownership or occupancy over the premises for which a new connection is being sought. Referring to provisions under the Electricity Act, the Rules and the Supply Code, he has submitted that an occupier cannot include unlawful occupier. He has further submitted that the petitioner has not annexed any receipt showing deposit of Rs. 25,000/- (Twenty Five Thousand) in the month of January 2020, as is being claimed in the writ petition. He has thus submitted that the petitioner has not been able to make out a case requiring this Court to issue a writ of Mandamus requiring NBPDCCL to provide electricity connection for the premises in question, in the petitioner's name.

**17.** From the pleadings on record, it is evident that there was no valid electricity connection available to the house in question from the date of death of late Sita Devi on 15.03.2010, who was the consumer. The petitioner applied for an electricity connection for the first time on 07.03.2020. There



is no justification at all why no application was made by the petitioner for fresh connection in her name soon after the sale deed was registered in her name or soon after the death of Sita Devi. Further, it is an admitted fact that the electricity supply is disconnected since 05.02.2020. The petitioner filed this writ application on 01.10.2021, almost one year after the application was filed for fresh connection. The questions, how the petitioner was availing electricity supply after the death of Sita Devi in 2010, and after the petitioner filed his application in 2020, though according to her she was and, she still is in occupation of the premises, have remained unanswered.

**18.** The Trial Court in its judgment in Title Suit No. 371 of 2011 has held the sale deed to be fraudulent. From the judgment of the Trial Court, it appears that the petitioner's husband, Mr Rajesh Kumar, to support his defence that he was adopted by Bhola Prasad and Sita Devi in 1983, relied on matriculation and intermediate certificates issued by the Bihar School Examination Board in which name of said Bhola Prasad figures as his father's name. The Trial Court has noted in its judgment that the Bihar School Examination Board has cancelled the matriculation and intermediate certificates and marks-sheets issued in the name of the petitioner's husband in



which name of Bhola Prasad was recorded as his father's name.

19. In the present proceeding under Article 226 of the Constitution of India, we should refrain from commenting upon the findings recorded in the judgment passed by the Trial Court in Title Suit No. 371 of 2011, which is a subject matter of appeal pending before this court. The conduct of the petitioner, however, as noted above does not inspire much confidence for this Court to exercise discretionary power under Article 226 of the Constitution of India. It is reiterated that there is no explanation on record by the petitioner, as to why the petitioner did not apply for electricity connection in her name soon after the execution of the registered sale deed and in any event after the demise of said, Sita Devi.

20. The decisions of this Court dated 03.05.2017 rendered in *CWJC No. 2963 of 2017 (Ashok Kumar Vs. The Principal Secretary, Department Energy and Ors.)*, dated 11.04.2014 in *CWJC No. 181 of 2014 (Suresh Chaudhary Vs. The Bihar State Power Holding Company Ltd. and Ors)* have been rendered in the facts and circumstances of those cases. In the case of **Ashok Kumar** (supra), there was a dispute between landlord and tenant and the landlord was opposed to a connection being given in the name of the tenant. In the said



circumstance this court directed the licensee to accept the application of the tenant. In the case of **Suresh Chaudhary**(supra), the applicant was admittedly the son of the original consumer. The Division Bench decision of Calcutta High Court in case of **Jai Narayan Patel Vs. Sanboth Chakraborty** reported in **2012 (3) CHN 548** is also of no help for the petitioner, in the peculiar facts and circumstances of the case as discussed hereinabove.

**21.** Filing of the present writ application seeking issuance of a writ of Mandamus of the nature as noted above much after passing of the decree in the title suit demonstrates petitioner's lack of *bona fide*.

**22.** We accordingly do not find any merit in this case. This case is accordingly, dismissed.

**(Chakradhari Sharan Singh, J)**

**Madhuresh Prasad, J:-** *I agree.*

**( Madhuresh Prasad, J)**

K.K.RAO/-

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