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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 2229 of 2022

(Via video conference)

Partha Roy

-vs.-

West Bengal State Electricity
Distribution Company Limited & Ors.

Mr. Tanmoy Chattopadhyay
...for the petitioner

Mr. Kanak Kiran Bandyopadhyay
...for the WBSEDCL

Mr. Manoj Malhotra,
Mr. Suman Dey
...for the State

Mr. Bhaskar Prasad Banerjee,
Mr. Parashar Baidya
...for the respondent no. 9

The petitioner is one of the vegetable vendors who sell vegetable from a market in the locality-in-question.

It is contended ably by learned counsel appearing for the petitioner that due to collusion between the Distribution Licensee and the respondent no. 9, which is a Truck Owners' Association, the petitioner and other vendors in the area are being deprived of getting new electricity connection in their own name for running their business.

Learned counsel appearing for the petitioner further contends that the Truck Owners' Association, that is, the respondent no. 9, has been supplying electricity from its own connection to the petitioner and other vendors and has been charging about three times the normal rate. Hence, it is contended that the petitioner's right under Section 43 of the Electricity Act, 2003 may be protected by giving specific direction to the Distribution Licensee to give electric connection immediately to the petitioner.

Learned counsel appearing for the respondent no. 9, points out that there are some obstacles to the petitioner getting electricity connection over the passage, which is the only available route for giving such connection. It is contended that the petitioner has relied on a purported deed of sale in favour of the petitioner, wherein the 30 feet wide road immediately adjacent to the plot sold has purportedly been given out to the petitioner by way of easement right of user.

However, it is contended that the respondent no. 9 is the owner of that passage. Hence, without a way-leave certificate from

the Truck Owners' Association, it is not legally tenable for the Distribution Licensee to give a new electric connection to the petitioner or any of the other vendors.

Learned counsel appearing for the Distribution Licensee vehemently opposes the allegations of collision with respondent no. 9 and submits that such allegations are unwarranted and controverts them to the hilt.

Learned counsel appearing for the Distribution Licensee submits that, prior to the petitioner, several other vegetable vendors in the locality had applied for electric connection. However, such applications, including the application of the petitioner, disclose their address to be that of the respondent no. 9. That apart, it is submitted that huge infrastructural upgradation has to be undertaken in the area in order to give electric connection to so many applicants, who are primarily vegetable vendors in the area.

However, when the Distribution Licensee personnel went to the locality to take inspection for the purpose of installing such new structures, for which material has also been gathered at the locale, they were resisted

squarely by the men and agents of the respondent no. 9 and the local people. As such, learned counsel for the Distribution Licensee contends that the matter may be referred to the concerned District Magistrate, since specific objections have been raised to the petitioner and other vendors taking electricity connection in the area.

Upon considering the submissions of the parties, it is clear that due to resistance created by the respondent no. 9, the electricity connection could not be given individually to the petitioner and other vendors. The respondent no. 9 has taken a specific plea as regards the route over which the connection shall be given, being owned by the respondent no. 9.

The Writ Court, unlike the Civil Courts, cannot enter into and/or decide the question of the respective titles of the parties.

However, it is now well-settled that if a person is in “settled possession” of a property, he or she is entitled, under Section 43 of the Electricity Act, 2003, to get electric connection at his/her occupied premises, of course, subject to compliance of all due formalities.

Moreover, the petitioner's and other vendors' occupation of the area has not been disputed by either the Distribution Licensee or the respondent no. 9, although the respondent no. 9 specifically disputes the legality of such possession.

Be that as it may, merely due to an objection raised by the respondent no. 9 as to the legality of the petitioner's possession, the right conferred on the petitioner and other vendors, who are evidently in settled occupation, under Section 43 of the Electricity Act, 2003 cannot be curtailed.

Hence, W.P.A. No. 2229 of 2022 is disposed of by directing the WBSEDCL to immediately make the necessary installation and raise the structures necessary for giving electric connection individually to the petitioner and/or other applicants, if any, of course, subject to compliance of all due formalities in law by the petitioner and the other applicants.

After such installations are ready, which work is expected to be completed within April 30, 2022 at the latest, the Distribution Licensee shall give individual electricity connection to the petitioner and other

legitimate applicants, if any, subject to compliance of all due formalities, as indicated above, but without insisting upon any further way-leave certificate, subject to production of *prima facie* documents of possession by the petitioner and the other applicants.

In the event the WBSEDCL personnel are resisted either in taking inspection, installing the required structure and/or giving electricity connection to the legitimate applicants including the petitioner, it will be open to the WBSEDCL personnel to immediately approach the Inspector-in-Charge, Sankrail Police Station (respondent no. 8 herein), who shall grant adequate police protection to ensure that no such hindrance is put up by the respondent no. 9 and/or its men and agents or other people in the locality.

Since there is apprehension of a law and order situation in the area, the police shall deploy adequate number of personnel and/or battalions, if necessary, for due compliance of the Court's order.

It is made clear that the respective civil rights, titles and interests of the petitioner, the other vendors in the area and the

respondent no. 9 in the writ petition have not been entered into on merits by this writ court. All such questions are kept open for being agitated before the competent civil court, if any of the parties so desire, which, if so approached, shall adjudicate upon the same without being influenced in any manner by any of the observations made in this order.

It is further clarified that the petitioner and the other applicants shall use legitimate addresses and satisfy the Distribution Licensee *prima facie* on such count for being given individual electric connection.

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.

Since affidavits have not been invited from any of the respondents, it is deemed that the respondents are denying and disputing all the allegations levelled in the writ petition.

(Sabyasachi Bhattacharyya, J.)