

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

(Appellate Side)

FMA 336 of 2022

With

CAN 1 OF 2022

(Through Video Conference)

Reserved on : 07.04.2022

Pronounced on: 26.04.2022

Subrata Kumar Samanta

...Appellant

-Vs-

The State of West Bengal & Ors.

...Respondents

Present:-

Mr. Samiran Mandal,
Mr. Abhinaba Dan,
Mr. Nitish Samanta, Advocates

... for the Appellant

Mr. S.S. Koley, Advocate

... for the WBSEDCL

**Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE**

**THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE**

Rajarshi Bharadwaj, J:

1. By this appeal, correctness of the order of the Learned Single Judge dated 03rd January, 2022 passed in W.P.A. No. 13366 of 2022 (Subrata kumar Samanta v. The State of West Bengal and Others) has been questioned by the appellant.
2. The facts in a nutshell are that on 21st December, 2015 a registered Deed of Gift was executed in favor of the appellate-petitioner in respect to the land in question. Following which, on 09th December, 2016 the appellate-petitioner acquired his right, title and interest over the said land in terms of the record of rights prepared by the statutory authority. Consequently, he started cultivation in the land in question.
3. The office of the Station Superintendent, Kakdwip, West Bengal State Electricity Distribution Company Limited without intimating the petitioner erected an electric poll right in the middle of the land belonging to the petitioner. On learning about the installation of the poll, the petitioner made a representation before the Station Superintendent Kakdwip and District Magistrate South 24 Parganas requesting to remove the same because it disrupts the cultivation on the land.
4. On 03rd January, 2022, the impugned order was passed by Hon'ble Justice Sabyasachi Bhattacharyya, wherein the learned counsel for the appellate-petitioner has contended that despite having acceded to the petitioner's request for shifting the connection and a new poll being installed at the edge of the petitioner's land, the Distribution Company has not shifted the connection. On the contrary, it was submitted by respondent no.5 that the electric poll in-question is a High Tension Line and cannot be readily shifted. Owing to which, it was held by the Learned Single Judge that the electric connection was taken about three years ago. Since, the appellant-petitioner did not approach any competent authority for the compensation in the meantime, there was no scope for reopening such avenue for the appellate-

petitioner. It was further held that only if the appellant-petitioner approaches the Distribution Company with a formal application for shifting the electric pole and the Distribution Company, on an inspection, is of the opinion that it is technically feasible to shift the connection as indicated, the Distribution Company shall shift such connection upon compliance with such formalities. Moreover, as far as the shifting of the electric line was concerned, Distribution Company was justified in arguing that the appellate-petitioner had to pay all the expenses as well as provide an alternative land where new electric meter can be installed. Thus, being aggrieved by the impugned order of the Learned Single Judge, the appellate-petitioner filed the present petition.

5. The question before this Court is whether the order of rejection passed by the Learned Single Judge is justified in the eyes of law or liable to be set aside? This Court is of the view that, immense power is vested on the Distribution Company, herein respondent no.5 under Section 164 of The Electricity Act, akin to the Telegraph Authorities which states- *“The Appropriate Government may, by order in writing, for the placing of electric lines or electrical plant for the transmission of electricity or for the purpose of telephonic or telegraphic communications necessary for the proper co-ordination of works, confer upon any public officer, licensee or any other person engaged in the business of supplying electricity under this Act, subject to such conditions and restrictions, if any, as the Appropriate Government may think fit to impose and to the provisions of the Indian Telegraph Act, 1885, any of the powers which the telegraph authority possesses under that Act with respect to the placing of telegraph lines and posts for the purposes of a telegraph established or maintained, by the Government or to be so established or maintained.”*

6. Having heard the counsel for parties and on perusal of records, this Court is of the view that the respondent no.5 is under no obligation to not install electric poles and can take necessary action in respect of any property in the event it is not possible to take the electric connection in-question over

an alternative passage. However, as held by the Learned Single Judge, the appellant-petitioner is at liberty to approach the Distribution Company with a formal application for shifting the electric pole and in such event, the appellant-petitioner should be willing to deposit the entire shifting charges for installation of a new electric pole.

7. Hence, this Court finds no reason to interfere in the order of the Learned Single Judge.

8. For the foregoing reasons, the appeal is dismissed. All pending applications are accordingly disposed of.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata

26.04.2022
PA(BS)