

21st November,
2022
(AK)
04

W.P.A 3185 of 2022

Diwakar Ray @ Rai
Vs.
CESC Limited and others

Mr. Indranil Halder
...for the petitioner.

Mr. Rajiv Lall
...for the CESC Limited.

Mr. Mainak Ganguly
Mr. Dhiraj Kr. Gupta
Mr. Abhishek Singh
...for the respondent no.4.

Learned counsel for the petitioner contends, by placing reliance on the annexure to the affidavit-in-opposition filed by the respondent no.4, along with the annexure to the affidavit-in-reply filed by the petitioner, that although previously the respondent no.4 had obtained an *ex parte* injunction order allegedly protecting his possession in respect of the disputed property, a subsequent order of injunction was passed by another civil court, where, upon hearing both sides, the court came to the conclusion that the present petitioner is in possession of a portion for the property, which entitles the plaintiff/petitioner to the use of electricity.

Learned counsel appearing for the private respondent controverts the allegation as regards the

petitioner being in possession and submits that the prior order of injunction was subsisting in favour of the respondent no.4, observing that the said respondent was in possession of the property, when the second injunction order was passed in favour of the petitioner. In such circumstances, allegedly suppressing the same, the present petitioner obtained the order of injunction from the other civil court.

It is further apprehended by the private respondent that if any electricity connection is given in favour of the petitioner, the same may create a special equity in favour of the petitioner, particularly insofar as the pending civil suits are concerned.

Learned counsel appearing for the CESC Limited submits that, otherwise, the CESC has no objection to give electricity connection to the petitioner. However, due to obstruction put up by the private respondent and his men and agents, such connection is not being able to be given.

A perusal of the respective injunction orders passed by the two courts in favour of each of the contesting parties indicates that the order of status-quo passed in favour of the present private respondent was obtained on December 16, 2016.

The said order, however, was passed *ex parte*, although even such an order is equally binding as one passed on contest.

However, the complication has arisen subsequently when the present writ petitioner preferred another suit before a different civil court, that is, the Civil Judge, Senior Division, Seventh Court at Alipore bearing Title Suit No. 470 of 2019, where the said civil court, upon a contested hearing of both sides, including the private respondent, passed an order restraining the private respondent and the other defendants from causing any disturbance in the supply of electricity to the plaintiff therein, that is, the present writ petitioner.

It was also *prima facie* found by the said civil court in the subsequent contested order that the writ petitioner is in possession of a portion of the suit property, irrespective of whether the writ petitioner is a trespasser or not, which entitles the petitioner to use electricity on the premises.

In view of such conflicting findings, it is beyond the scope of the writ court to enter into the factual merits and demerits of the respective cases of the parties, particularly as regards their right, title and possession in respect of the disputed property.

However, since the order passed in favour of the writ petitioner was subsequent and was passed on contest, for the purpose of ascertaining electricity connection, we have to presume on a *prima facie* footing that the petitioner is all probability in possession of the said property.

Of course, such issue will be thrashed out by the parties and decided by the civil courts ultimately in connection with the suits.

Even then, the argument of the private respondent that the definition of “occupier” in Rule 2 of the Works of Licensees Rules, 2006 includes a person in lawful occupation cannot cut ice in the present case.

The various provisions of the 2006 Rules indicate primarily that prior consent of the owner or occupier of any building or land has to be taken before carrying out works as envisaged therein. Hence, the said definition operates in a separate field that Section 43 of the Electricity Act, 2003.

However, Section 43 of the Electricity Act, 2003, which is the parent statute, clearly elucidates that merely being an occupier, a person is entitled to electricity connection.

Moreover, there are several judgments of this court and it is no longer *res integra* that an occupier of premises, irrespective of the legality of his possession, is entitled to get electricity connection at the property.

Inasmuch as Clause 3.2.1 of Regulation 46 of the WBERC, 2010 is concerned, the ‘Way Leave’ contemplated therein from the lawful owner cannot be insisted upon in the present case, since it is well-settled that the provisions of Section 43 of the 2003 Act, coupled with Article 21 of the Constitution of India, confer the

right on an occupier to get electricity supply. Such right cannot be objected to under normal circumstances.

Although it cannot be determined beyond doubt at this stage as to who is in actual physical possession of the disputed property, for the reasons as delineated above, the petitioner is held to be entitled to electricity connection in the petitioner's name upon being *prima facie* in occupation of the property.

Accordingly, WPA 3185 of 2022 is disposed of by directing the CESC Limited to give electricity connection to the petitioner at the premises in dispute, subject to compliance of all formalities by the petitioner, as expeditiously as possible, preferably within a fortnight from date or from compliance of all formalities, whichever is later.

In the event the CESC personnel face any obstruction in doing so, it will be open to the said personnel to approach the respondent no.3, the Officer-in-Charge of the Mahestala Police Station for adequate police assistance.

If so approached, the respondent no.3 shall grant such assistance to the CESC personnel for the limited purpose as indicated above and, if necessary, to open any padlock or other hindrance in doing so, at the cost, however, of the petitioner.

It is, however, clarified that the electricity connection, as and when given to the petitioner, shall not create any special right, equity or interest in favour of the

petitioner and/or *per se* be an indicator of the petitioner's occupation of the property for the purpose of the pending civil suits.

It will be open to the civil courts to decide such issue, along with other issues pending before those, independently in due course of law without being influenced in any manner by any of the observations made herein.

Affidavit-in-opposition and affidavit-in-reply filed in court today be kept on record.

Learned counsel for the private respondent also urges that in view of the petitioner having got an order of electricity connection from a competent civil court, the present writ petition is not maintainable to enforce the same.

However, such argument is not acceptable on the face of it, since, in the same breath, the private respondent cannot dispute the right of the petitioner to get electricity connection and resist the maintainability of the present writ petition on the ground that the petitioner is so entitled in terms of a civil court's order.

As such, the said ground is turned down.

Parties as well as all concerned shall act on the written communication of the learned Advocates for the parties, coupled with server copy of this order, without insisting upon prior production of a certified copy thereof.

There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)