

AD. 11.
February 28, 2022.
MNS.

(Through Video Conference)

WPA No. 3194 of 2022

Sri Duranta Samanta
Vs.
West Bengal State Electricity Distribution
Company Limited and others

Mr. Kushal Chatterjee,
Mr. Abir Lal Chakraborty

...for the petitioner.

Ms. Bandana Basu

...for the WBSEDCL.

Mr. Udayan Roy,
Mr. Sukanta Mondal,
Mr. Debabrata Roy

...for the respondent nos. 5 and 6.

Mr. Manish Kumar Das

...for the respondent nos. 7 and 8.

Learned counsel for the petitioner contends that, due to resistance being created by respondent nos. 5 to 8 in the writ petition, the West Bengal State Electricity Distribution Company Limited (in short 'WBSEDCL') is not being able to give new electric connection to the petitioner.

By placing reliance on a quotation raised by the WBSEDCL, annexed at page 38 (Annexure – P4) of the writ petition, it is contended that the WBSEDCL has not disclosed any such objection to giving such connection.

Learned counsel also submits that a previous writ petition made by the present petitioner was dismissed on the technical ground of suppression of relevant materials, which order was affirmed in appeal by the Division Bench of this Court. Hence, there is no impediment in filing the present writ petition, since the petitioner has averred and annexed the necessary documents to indicate the pendency of the current civil suit, at the behest of the petitioner, before the competent civil court.

Moreover, it is submitted that the petitioner is already enjoying an order of *status quo* passed by the civil court, a true copy of which is also annexed to the writ petition.

Learned counsel for the petitioner contends that the municipal tax receipts, annexed to the writ petition, also indicate that the petitioner is in possession of the premises-in-question.

Learned counsel appearing for the respondent nos. 5 and 6 and 7 and 8 separately contend that the respondent nos. 5 and 6 in the present writ petition have not been impleaded in the pending suit as defendants, although the respondent nos. 7 and 8 have been arrayed as defendants.

Hence, it is submitted that the order of *status quo* does not bind the respondent nos. 5 and 6 in any event. That apart, it is specifically contended by learned counsel appearing for the respondent nos. 5

and 6 on the one hand and respondent nos. 7 and 8 on the other that the petitioner does not have possession of the suit nor is the owner thereof in view of the petitioner's father having transferred the property in favour of others, even prior to the petitioner's birth.

Learned counsel appearing for the respondent nos. 5 and 6 further submits that the relevant extracts of the records of rights, which are in the custody of the said respondents, clearly show that the said respondents, and not the petitioner, are in possession of the property.

Learned counsel appearing for the WBSEDCL contends that the mere raising of quotation, prior to inspection of the property, *per se*, does not indicate that the WBSEDCL has admitted the possession of the petitioner, since such quotation is raised in an automatic process upon an online application having been made by a proposed consumer.

Upon hearing learned counsel for the parties, it is evinced that a civil suit is, at present, pending before the competent civil court at the behest of the petitioner.

Since the petitioner has disclosed such fact and annexed relevant papers to the present writ petition, the dismissal of the previous writ petition, as well as the appeal filed against the same, does not

operate as an impediment to the present writ petition being heard on merits.

However, as also noted from the Division Bench order passed by the appellate court on the previous round of litigation, liberty was granted to the petitioner to approach the civil court for canvassing his grievance.

Since it is well-settled that a person in “settled possession” of a property is entitled to have a new electric connection in his/her name, as a matter of right, within the ambit of Section 43 of the Electricity Act, 2003, but the petitioner’s alleged possession has been specifically controverted by the private respondents and in view of the civil court merely passing an order of *status quo* without specifically referring to the person/persons who is/are in possession of the property, it cannot, at this stage, be held by the writ court and/or the WBSEDCL that the petitioner is in settled possession of the property. However, the above observation is without prejudice to the rights and contentions of the parties in the suit.

In view of the aforesaid observations, WPA 3194 of 2022 is disposed of by granting liberty to the present writ petitioner to approach the civil court seeking appropriate relief in respect of the petitioner’s right to have a new electricity connection in his own name at the suit premises.

If so approached, the competent civil court, where Title Suit No. 75 of 2009 is pending, shall decide the said prayer of the petitioner, upon first ascertaining *prima facie* whether the petitioner is in possession of the disputed premises, without being prejudiced by any of the observations made herein.

It is further clarified that this Court has not gone into the merits of the respective rights and contentions of the private parties and it will be open to the parties to argue their respective contentions in that regard to the fullest before the competent civil court and/or any other forum, if occasion so arises.

Since no affidavits have been invited from any of the respondents, the allegations made in the writ petition are deemed to stand controverted by all the respondents.

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 with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)