

14 24.11.2022

gd/ssd

MAT/276/2022
IA NO: CAN/1/2022
SRI RAMESH KUMAR JHA
VS
WEST BENGAL STATE ELECTRICITY
DISTRIBUTION COMPANY LIMITED AND ORS.

Mr. Srijib Chakraborty,
Ms. Sudeshna Basu Thakur
..for the Appellant.

Mr. Sumit Ray
..for WBSEDCL.

Mr. Debanik Banerjee,
Mr. Akash Ganguly
..for the Respondent Nos.5 and 6.

The appellant is aggrieved with the order of the learned Single Judge dated 3rd February, 2022 whereby WPA 14419 of 2021 filed by the appellant has been disposed of granting liberty to the appellant to approach the competent civil court in the pending civil suit with the prayer for electricity connection in the premises.

The appellant had approached the writ court seeking a direction to the respondent authorities to install new meter in the name of the appellant in respect of premises no.1206, Brahmapur, Police Station-Bansdroni, Kolkata.

It has been pointed out by the learned counsel for the appellant that on the application of the appellant an attempt was made by the respondent/electricity

company to give the electricity connection but there was resistance by the respondent nos.5 and 6 in this regard.

Learned Single Judge in the impugned order has noted that there is some dispute regarding identity as well as title of the property and that the civil suit is already pending along with the counter claim, therefore, has relegated the appellant to the remedy of filing an appropriate application in the competent civil court where the suit is pending.

During the course of argument Rule 3 of the Works of Licensees Rules, 2006 has been pointed out which provides for remedy in case of resistance or objection in respect of work of laying down or placing the electricity supply line or other works through or against any building or land.

Rule 3 provides as under:

“Licensee to carry out works.-(1) A licensee may-

- (a) carry out works, lay down or place any electric supply line or other works in, through, or against, any building, or on, over or under any land whereon, wherever or whereunder any electric supply-line or works has not already been lawfully laid down or placed by such licensee, with the prior consent of the owner or occupier of any building or land;
- (b) fix any support of overhead line or any stay or strut required for the purpose of securing in position any support of an overhead line on any building or land or having been so fixed, may alter such support:

Provided that in case where the owner or occupier of the building or land raises objections in respect of works to be carried out under this rule, the licensee shall obtain permission in

writing from the District Magistrate or the Commissioner of Police or any other officer authorised by the State Government in this behalf, for carrying out the works:

Provided further than if at any time, the owner or occupier of any building or land on which any works have been carried out or any support of an overhead line, stay or strut has been fixed shows sufficient cause, the District Magistrate or the Commissioner of Police, or the officer authorised may by order in writing direct for any such works, support, stay or strut to be removed or altered.

(2) When making an order under sub-rule (1), the District Magistrate or the Commissioner of Police or the officer so authorised, as the case may be, shall fix, after considering the representations of the concerned persons, if any, the amount of compensation or of annual rent, or of both, which should in his opinion be paid by the licensee to the owner or occupier.

(3) Every order made by a District Magistrate or a Commissioner of Police or an authorised officer under sub-rule (1) shall be subject to revision by the Appropriate Commission.

(4) Nothing contained in this rule shall effect the powers conferred upon any licensee under section 164 of the Act.”

Applicability of Rule 3 in the present case has not been disputed.

Learned counsel for the respondent/electricity company has submitted that the electricity company has no objection in filing an appropriate application before the District Magistrate in terms of Rule 3.

Learned counsel for the appellant has also submitted that he has no objection if the District Magistrate considers the entire issue under Rule 3.

Learned counsel for the respondent nos.5 and 6

has referred to the map on page 107 of CAN 1 of 2022 and has submitted that incorrect particulars about the location of the property have been furnished by the appellant.

Submission of learned counsel for other parties is that this issue can also be gone into by the District Magistrate while deciding the application under Rule 3. That apart, the respondent nos.5 and 6 in the proceedings under Rule 3 will have the opportunity to place their stand by way of representation.

Learned counsel for the respondent nos.5 and 6 has placed reliance upon the order of this Court in the matter of *Ganesh Chandra Purokait @ Purkait v. West Bengal State Electricity Distribution Company Limited* reported in 2022 (1) CHN (Cal) 279. But that was a case where an application for electricity connection was already moved in the pending suit and the writ petition was filed, therefore, this Court had reached to the conclusion that the concerned party could not be permitted to avail the parallel remedy. That apart, that was not a case based upon Rule 3.

Learned Single Judge in the order under challenge has also taken a note of the fact that the appellant has remedy before the District Magistrate but has declined the same on the ground of dispute of identity and title. It is undisputed before this Court

that the District Magistrate can look into the issue of identity and possession which are the relevant issues.

In the aforesaid circumstances, we dispose of the present appeal modifying the impugned order under challenge and permitting the respondent/electricity company to file an appropriate application under Rule 3 before the District Magistrate, who, on receipt of the same, will take an appropriate decision in accordance with law expeditiously.

The appeal is accordingly disposed of.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)

