

WPA No. 5115 of 2022

Shrikanta Bhowmick
Vs.
The Chairman, West Bengal State Electricity
Distribution Company Limited and others

Mr. Syed Mosihar Rahman

.... for the petitioner

Dr. Madhusudan Saha Roy

.... for the WBSEDCL

Md. Sabir Ahmed,
Mr. Mujibar Ali Naskar,
Mr. Tasnim Ahamed

.... for the respondent no.5

Learned counsel for the petitioner contends that despite the petitioner having applied for new electric connection, the same is not being given by the Distribution Licensee.

Learned counsel appearing for the private respondent hands over a photocopy of an order dated January 21, 2019 passed in Title Suit No.24 of 2019, whereby the parties to the suit were directed to maintain *status quo* in respect of the possession, nature and character of the scheduled property as it stood on that date.

Admittedly, the writ petitioner and the respondent no.5 are parties to the suit.

Learned counsel for the writ petitioner places reliance on Section 43 of the Electricity Act, 2003 (hereinafter referred to as “the 2003 Act”) to argue that the petitioner has a right to get electricity connection, which is a part of the right to life.

In this context, learned counsel for the petitioner cites an unreported coordinate Bench judgement dated June 13, 2019 passed in WP 8495(W) of 2019 and a Division Bench judgment of this court reported at *AIR 2008 Cal 66 (Amarendra Singh vs. Calcutta Electric Supply Corporation Ltd. & Ors.)*.

In the judgment of the learned Single Judge, the learned Single Judge had taken note of the fact that a civil suit was pending between the parties to the said writ petition, in which the writ petitioner therein (plaintiff in the suit) had made an application for mandatory orders in his favour to permit the Distribution Company to grant him electricity connection as, according to him, the defendants in the said suit, being the private respondents in the writ petition, were obstructing the Distribution Company. The said application was rejected since the plaintiff/petitioner could not demonstrate that there

was in fact any obstruction from the private respondents. The learned Single Judge, after so recording, expressed the opinion that the writ petitioner was entitled to electricity connection and directed the Distribution Licensee to give the same subject to the writ petitioner therein fulfilling all required formalities.

However, as opposed to the said unreported case, in the present case, there is a subsisting order of *status quo* granted by the competent civil court in respect of possession, nature and character of the suit property. Although it may be technically argued that grant of electricity connection cannot *ipso facto* tantamount to violation of status quo, it is best to leave the interpretation of the order of the civil court to the civil court itself, instead of doing so sitting in the writ jurisdiction of this court.

That apart, in the said unreported judgment, the writ petitioner had unsuccessfully applied before the civil court for an electricity connection to be given but such prayer was refused merely on the ground that obstruction from the private respondents could not be demonstrated by the said writ petitioner.

However, no such question arises in the present case, since both the writ petitioner and the private respondent no.5 have been specifically restrained by

an order of *status quo* from taking any steps or dealing with the property.

As far as the Division Bench judgment is concerned, it was observed by the Division Bench in paragraph no.2 of the judgment that the Kolkata Municipal Corporation authorities had realised rent from the appellant therein and accepted him as occupier in respect of a portion of the premises-in-question and the appellant, although has been occupying the portion of the premises-in-question for a considerable period, neither any objection was ever raised nor any proceeding was initiated by or at the instance of the respondents challenging the authority of the said appellant to occupy the said premises. Thereafter, placing reliance upon the provisions of Section 43 of the 2003 Act, it was observed by the Division Bench that the legality and/or validity of the occupation of the premises-in-question by the appellant can be decided in the civil court but that will not prevent the said appellant from enjoying the benefit of electricity connection.

As distinguished from such case, in the present matter, a specific order of *status quo* is subsisting, granted by a competent civil court, which binds both the writ petitioner and the private respondent. Such *status quo* order is in the nature of a prohibitory

injunction and, as such, the connotation of the same is best left to be interpreted by the civil court itself for the purpose of deciding whether, in the perception of the said court, taking electricity line would amount to violation of the trial court's order of status quo.

Unlike the case which arose before a Division Bench, the legality and/or validity of the occupation of the premises, purportedly by the writ petitioner, is not under challenge in the present case. If it was a case simpliciter of a challenge being thrown to such legality despite the writ petitioner being shown to be in settled occupation of the premises, undoubtedly, the principles on which the judgments have been cited by learned counsel for the petitioner, would hold good. However, in the teeth of the *status quo* order in the present matter, the said principles get circumscribed by the said order. Section 43, although is associated with the right to life as guaranteed by the Constitution, is not an unfettered right but is subject to compliance of several legal formalities.

As such, the appropriate relief for the writ petitioner is to approach the civil court, which granted the *status quo* order, for an order of modification of the *status quo* order and/or liberty or leave to get electricity connection at the premises in the writ

petitioner's name, despite the subsistence of the *status quo* order.

It may further be added that the contention of the petitioner that there is an existing common passage over which connection can be given. However, the said issue cannot be decided finally as well, particularly in view of the pendency of the civil suit.

Hence, WPA No.5115 of 2022 is disposed of by granting liberty to the petitioner to approach the civil court, where the suit between the private parties is pending, with a prayer to have the leave to take electricity connection at the premises in the name of the petitioner.

It is made clear that this court has not gone into the merits of the respective contentions of the parties to the suit and it will be open to both the writ petitioner and the private respondent no.5 to agitate all contentions, including their respective rights, title and interest in respect of the suit property, if any, before the civil court.

If so approached, the civil court will decide the issue in accordance with law, without being unnecessarily prejudiced by any of the observations made herein.

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.)