

AD-45
Ct No.09
19.09.2022
TN

WPA No. 5698 of 2022

Krishna Sah
Vs.
CESC Limited and others

Mr. Dwaipayan Banerjee,
Mr. Jit Roy,
Mr. Abir Das

.... for the petitioner

Mr. Jayanta Kumar Dhar

.... for the CESC Limited

Mr. Asit Kr. Bhattacharya,
Ms. Mousumi Biswas

.... for the private respondent

Learned counsel for the petitioner contends that the petitioner is admittedly in occupation of the disputed property, where the petitioner has sought electricity connection. However, due to resistance of the private respondent no.3, the CESC Limited is not being able to give such connection to the petitioner and/or to hold any inspection for such purpose.

Learned counsel appearing for the CESC Limited contends that due to obstruction created by the private respondent and/or his men and agents, the CESC Limited could not even hold an inspection to ascertain the feasibility of such connection being given to the petitioner.

Learned counsel appearing for the private respondent, by placing reliance on his affidavit-in-opposition, submits that in the plaint of the eviction suit filed by the plaintiff/ private respondent no.3 before the civil court against the actual tenant, it has been alleged that the tenant has sub-let the property in favour of the present petitioner and others. However, it has also been pleaded that the present petitioner is merely in occupation by keeping certain articles in the premises-in-dispute and do not actually reside in the said premises.

Learned counsel for the private respondent also places reliance on the photocopy of the Voter card of the writ petitioner annexed at page-15 of the writ petition to indicate that the address given therein differs from the address at which the petitioner has applied for the electricity connection, which tallies with the address of the petitioner as given in the cause title of the writ petition as well.

It is relevant to note that two suits are pending, respectively at the behest of the writ petitioner and the private respondent, before the civil court. The petitioner has filed the suit claiming declaration of title on the basis of adverse possession, whereas the private respondent no.3 has filed an eviction suit against the alleged tenant of the private respondent

no.3, alleging therein that the present writ petitioner and others are sub-tenants.

It is clearly admitted in paragraph no.7 of the plaint of the eviction suit filed by the private respondent no.3, bearing Ejectment Suit No.38 of 2006, that the said original tenant has sub-let the suit premises to Sri Krishna Show, Dipu Mahato and others by changing the nature and character of the suit property.

Krishna Show (alias Krishna Sah), one of the alleged sub-tenants in the plaint of the private respondent himself, is the present writ petitioner. Hence, irrespective of the Voter card being either erroneous, indicating apparent residence of the petitioner at a different premises, it may very well be that “5/3A, Raja Basanta Roy Road”, that is, the address as shown in the said Voter card, is a misprint of 513A, Raja Basanta Roy Road, where the petitioner has been alleged to be inducted as a sub-tenant by the private respondent no.3 himself.

That apart, even if the present writ petitioner also has a residence somewhere else, it cannot be gainsaid that the private respondent no.3 has acquiesced in paragraph no.7 of his plaint that the original tenant has sub-let the disputed property in favour of the petitioner and others. Hence, the private

respondent is debarred, by operation of the principle of Acquiescence, from turning around and submitting now that the writ petitioner is not in possession of the premises.

It is well-settled that a person in settled occupation of a property, irrespective of the legality or illegality of such occupation, is entitled to the basic right of electricity, as guaranteed by Section 43 of the Electricity Act, 2003, read in conjunction with Article 21 of the Constitution of India. Hence, there cannot be any impediment in the CESC Limited giving such connection to the petitioner, subject to feasibility of the same and compliance of all formalities by the writ petitioner in that regard.

Hence, WPA No. 5698 of 2022 is disposed of by directing the CESC Limited to hold an inspection at the premises where the petitioner has sought electricity connection for the purpose of ascertaining the feasibility of giving such connection to the petitioner. Such inspection shall be held within a fortnight from date upon prior notice being given by the CESC Limited to the petitioner as well as the private respondent.

Upon such inspection, if the CESC Limited is satisfied that it is feasible to give an independent electricity connection to the petitioner at the said

premises from the existing meter board position subject to compliance of formalities by the petitioner, the CESC Limited shall give such connection to the petitioner at the said premises.

In the event the CESC personnel are obstructed by the private respondent no.3 and/or his men and agents, either at the juncture of the CESC personnel holding the inspection as directed above or subsequently, at the time when the CESC officials go to the premises for giving such electricity connection to the petitioner, it will be open to the CESC personnel to approach the local police station for adequate police assistance in that regard. If so approached, the Officer-in-Charge/Inspector-in-Charge (as applicable) of the concerned local police station shall give such assistance to the CESC personnel at the cost of the petitioner.

It will be open to the police personnel to break open any padlock or other hindrance, if put on the way of access to the CESC personnel to hinder their access to the existing meter board position, for the limited purpose of holding such inspection and/or giving such connection to the petitioner

The parties shall act on the 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 certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)