

7 30.06.2022

PA(SS)

MAT 614 of 2022
IA NO: CAN/1/2022, CAN/2/2022
Ajay Kumar Chowdhury
Vs.
Partha Roy and Ors.

Mr. Subir Sanyal,
Mr. Rudranil De,
Mr. Santimoy Bhattacharyya, Advocates
... for the appellant

Mr. Tanmoy Chattopadhyay, Advocate
... for the respondent No.1

Mr. Sujit Sarkar Kole,
Mr. Kanak Kiran Bandyopadhyay, Advocates
... for the WBSEDCL

Mr. Manoj Malhotra,
Mr. Suman Dey, Advocates
... for the State

Mr. Bhaskar Prosad Banerjee,
Mr. Parashar Baidya, Advocates
... for the respondent No. 10

Learned counsel for the appellant has submitted that against the order of this Court dated 27.04.2022 in this appeal the respondent has filed the review petition.

Learned counsel appearing for the respondent, on instructions, has submitted that though the respondent has filed the review petition, but he undertakes not to press the review petition before the concerned Bench so that this appeal can be heard.

Heard with consent.

CAN 1 of 2022 has been filed by the appellant seeking leave to file the appeal on the ground that the

appellant was not a party before the writ Court and that the appellant has order of injunction passed by the civil Court in his favour, but, in pursuance to the direction of the learned Single Judge, the electricity poles are being installed on his land, therefore, he is an affected party.

Prayer has been opposed by the learned Counsel for the respondent No.1 (writ petitioner) by submitting that the appellant has entered into a development agreement with the respondent No. 10 herein who was a party in the petition, therefore, the appellant has no separate right.

Having considered the rival plea of the Counsel for the parties, we find that the appellant is affected by the order of the learned Single Judge and that it has not been demonstrated before this Court that by virtue of the development agreement all right, title and interest of the appellant on the plot in question are lost, therefore, we deem it proper to allow CAN 1 of 2022 and grant the appellant leave to appeal.

With consent, learned Counsel for the parties are also heard on merit.

This appeal is directed against the order of the learned single Judge dated 04.03.2022 whereby W.P.A. No. 2229 of 2022 filed by the respondent No.1 (writ petitioner) has been allowed and a direction has been given to the respondent WBSEDCL to immediately take

necessary measures for giving electricity connection individually to the respondent No. 1 and other applicants and in case of obstruction take police help.

Submission of the learned Counsel for the appellant is that in terms of Rule 3 of the Works of Licensees Rules, 2006 consent of the owner or occupier of building or land is required and in case of objection the licensee is required to approach the District Magistrate where the owner or occupier may have the opportunity.

Submission of the learned Counsel for the respondent No. 1 is that the respondent and other applicants are legitimate vendors who for want of individual electricity connection are paying three times the charges for supply of electricity from the connection of the respondent No. 10 whereas they have a right of individual connection under the Electricity Act, 2003.

Having heard the learned Counsel for the parties and on perusal of the record it is noticed that no error has been committed by the learned Single Judge in reaching to the conclusion that the respondent No. 1 (writ petitioner) being in a settled occupation has a right under Section 43 of the Electricity Act, 2003 which cannot be curtailed.

In the said background, learned Single Judge has not committed any error in issuing a direction to the

WBSEDCL to take necessary steps for installation and raising the structures necessary for giving electricity connection individually to the respondent No. 1 and other applicants. Such measures are required to be taken subject to compliance of due formalities by the respondent No. 1 and other applicants also by the electricity company. If there is any objection by the appellant in that process then the steps which are required under Rule 3 of Rules of 2006 are to be taken which provided for consideration of representation by District Magistrate or officer specified therein. The objection of appellant is that the poles are being erected on his land and if that objection is correct, then the respondent licensee is required to follow the procedure prescribed in Rule 3. Hence, respondent electricity company is directed to act in accordance with the Rule 3 of the Rules of 2006.

We find no error in other part of the order of the learned Single Judge, hence we dispose of this appeal by affirming the order of the learned Single Judge with the above modification.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)