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08.06.2022
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WPA No.8775 of 2022

Sri Uday Kumar Ghosh
Vs.
The C.E.S.C. Limited and others

Mr. Asim Banerjee,
Ms. Mrinmoyee Roy Chowdhury
.... for the petitioner

Mr. Debanjan Mukherji
.... for the CESC Limited

Mr. Syed Mosihar Rahman
.... for the State

Affidavit-of-service filed in court today be kept
on record.

Learned counsel for the petitioner submits that
the petitioner is one of the heirs of late Chandrabati
Ghosh, the grandmother of the petitioner, along with
other co-heirs.

It is further submitted that a Will was executed
by the said Chandrabati Ghosh (since deceased),
although no probate has yet been taken thereof.

Learned counsel further submits that the
petitioner is in exclusive possession of one of the
portions of the property left by Chandrabati Ghosh,

which is separated from the rest of the property by a wooden partition.

It is contended that the petitioner only has minimal electricity points and is being resisted by the other co-owners from taking further points and, as such, the petitioner was constrained to apply for a new and independent electricity connection at the premises in his name. However, such application was refused by the CESC Limited on the ground of apprehended splitting of load. Thus constrained, the petitioner approached the Grievance Redressal Officer (GRO) and thereafter the Ombudsman, but without any success.

It is, thus submitted, that since Section 43 of the Electricity Act, 2003 (hereinafter referred to as “the 2003 Act”) confers a right on the petitioner, as a citizen, to have an independent electricity connection, such right cannot be refused by the CESC authorities on an appreciation of the questions of title or exclusive possession of the petitioner.

Learned counsel for the CESC Limited submits that there was a joint inspection of the premises-in-question and it was found that there are other co-sharers of the petitioner at the premises. There is another commercial connection in the premises.

The petitioner is at present enjoying electricity from the domestic electricity meter standing in the name of late Chandrabati Ghosh. As such, it is apprehended that further new connection in the name of the petitioner would only cause splitting of load.

Upon hearing learned counsel for the parties, it is evident that the primary cause of action of the petitioner is against his co-owners, who are allegedly resisting the petitioner from taking further electricity points to operate electrical and electronic gadgets, which are absolutely necessary for the petitioner and his family in modern days.

Even minimal electronic gadgets cannot be used by the petitioner, as it appears from the writ petition, due to paucity of electricity points. However, unless the probate is granted and the property distributed in terms thereof by the Executor and/or a partition decree is obtained by the parties and/or a registered deed of partition is executed between the co-sharers and separation and/or mutation is obtained in the records of the Corporation, it is not possible for the CESC Limited, which does not have the authority to decide title and/or separate possession of the parties, to grant a new connection to the petitioner without having a legitimate apprehension of splitting of load.

In any event, since the petitioner is already enjoying electricity connection exclusively from the existing domestic connection in the name of late Chandrabati Ghosh, it is for the petitioner and the other co-sharers to apply for transfer of their names in place of Chandrabati Ghosh and, only after the petitioner's portion is demarcated and/or mutated separately in accordance with law, the petitioner can claim legitimate right as a separate exclusive owner for getting a new electricity connection.

Section 43 of the 2003 Act is not an unfettered right but is circumscribed by the Regulations framed by the West Bengal Electricity Regulatory Commission, as per the 2003 Act itself.

Hence, it cannot be said that, after the GRO as well as the Ombudsman affirmed the finding that the petitioner's application would give rise to splitting of load, there is any further scope of interference by the writ court.

Accordingly, WPA No.8775 of 2022 is disposed of with liberty to the petitioner to approach the civil court, in a partition suit or otherwise, or the probate court, for adequate and appropriate reliefs against the petitioner's co-sharers to obviate the alleged resistance, if any, created by his co-sharers in the

petitioner enjoying latest electrical/electronic amenities.

It is made clear that the legal rights of the petitioner and/or the petitioner's co-sharers have not been entered into by this court at all and it will be open to any other legal forum, if moved, to decide such issues independently, without being influenced in any manner 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.)