

M/L. 75.
November 14, 2022.
MNS.

WPA No. 9844 of 2022

Mrinal Roy
Vs.
West Bengal State Electricity Distribution
Company Limited and others

Mr. Arunava Ganguly

...for the petitioner.

Mr. Srijan Nayak,
Mrs. Rituparna Maitra

...for the WBSEDCL.

Mr. Sajal Kumar Pandit,
Mr. Mahim Sasmal,

...for the private respondents.

An adjournment is sought by the private respondents.

Learned counsel for the petitioner submits that despite there being no nexus between the petitioner and the erstwhile owners, by whom outstanding dues are allegedly payable to the West Bengal State Electricity Distribution Company Limited (WBSEDCL), the WBSEDCL is insisting upon prior payment of such alleged outstanding amounts before giving a new electricity connection to the petitioner.

Learned counsel for the petitioner places reliance on the deed of purchase of the petitioner, which is dated September 3, 2014, where it has been indicated in the internal page – 3 that the petitioner was so purchasing without any encumbrances whatsoever. In fact, the private respondents, being the vendors, also undertook in the said deed itself that if there was any liability regarding the property, they would clear the same.

Learned counsel appearing for the WBSEDCL places reliance on the affidavit-in-opposition filed by the WBSEDCL and points out that there is no doubt with regard to the outstanding dues payable by the private respondents.

However, since the private respondents are seeking time today and do not want to take liability in that regard, learned counsel for the WBSEDCL insists that affidavit(s)-in-opposition be filed by the private respondents.

In view of the submissions made and the materials on record, it appears that the deed of purchase of the petitioner clearly indicates that there was no encumbrance at the point of time when the petitioner purchased the property.

It is not for the writ court to decide such issue between the WBSEDCL and the private respondents within the scope of the present writ petition.

However, it appears from the communication dated January 8, 2021, annexed at page 25 of the writ petition (Annexure P2), that one of the disconnections with regard to the private respondents occurred on December 11, 2015, that is subsequent to the purchase of the property by the petitioner. Regarding a second disconnection, the same also took place subsequent to the purchase, on November 3, 2017, although the WBSEDCL submits that such payment was subsequently cleared off.

The third disconnection made in respect of another private respondent was made on October 25, 2013. Although the last aforesaid disconnection was made prior to the purchase of the property by the petitioner, there is no link to connect the petitioner or to attribute knowledge to the petitioner with regard to the alleged outstanding dues, if any.

It is well-settled that electricity dues do not operate as a charge on the property. As such, even applying the principle of *caveat emptor*, it is

not possible on a regular search for the purchaser to discover whether there were any previous electricity dues suffered by the vendor. Hence, it would be unjust to cast the liability of payment of the outstanding dues left by the vendor, if any, on the subsequent purchaser.

In such view of the matter, WPA 9844 of 2022 is disposed of by directing the WBSEDCL to give the new electricity connection to the petitioner upon compliance of all due formalities, without insisting upon prior payment of the alleged outstanding dues from the private respondents with regard to the premises-in-question. Such connection shall be given within a fortnight from the date of compliance of all formalities by the petitioner.

It is, however, made clear that nothing in this order shall preclude the WBSEDCL from recovering the alleged outstanding dues, if so entitled, from the private respondents by instituting a proper proceeding in that regard. If so instituted, the appropriate competent court/forum shall decide such proceeding in accordance with law 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.)