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21.06.2022
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WPA No. 10081 of 2022

Sneha Construction
Vs.
The Calcutta Electric Supply Corporation
Ltd. and others

Mr. Tanmoy Mukherjee,
Mr. Souvik Das

.... for the petitioner

Mr. Sumon Ghosh

.... for the CESC Limited

Mr. Ambar Nath Banerjee,
Mr. Mahadeb Sarkar

.... for the State

Mr. Soumyen Datta,
Mr. Tapas Singha Roy

.... for the private respondent no.5

Learned counsel for the petitioner contends that due to resistance put up by the private respondent no.5-owner and her men and agents, the Calcutta Electric Supply Corporation Ltd. (for short “the CESC Limited”) is not being able to give a new electricity service connection to the petitioner.

Learned counsel appearing for the CESC Limited, while corroborating such submission, adds that shifting of the existing service connection is

necessary for giving such new connection to the petitioner.

Learned counsel appearing for the private respondent submits that there is a pending dispute in respect of the respective allocations of the newly constructed building between the petitioner and the private respondent-owner.

It is submitted that, in contravention of the sanction plan, the petitioner has been making illegal construction, in the portion of which the petitioner is in occupation. As such, it is contended that the petitioner is not entitled in law and in equity to get a separate service connection. Nonetheless, the private respondent is willing to continue giving electricity connection to the petitioner from the existing service connection in the name of the private respondent.

It is further submitted that there is a subsisting injunction order, for implementation of which an order of police help has been granted by the competent civil court. As such, it is submitted that the shifting of the service connection and/or giving a new connection to the petitioner would be to the detriment of the outcome of the said civil suit.

Inasmuch as the allegation of illegal construction being made by the petitioner is concerned, the same is in contention before the

appropriate Municipal Authority, upon a complaint having been lodged in that regard by the private respondent. However, it is beyond the charter of the CESC Limited, as a Distribution Licensee, to pre-judge the said issue of illegality, in the absence of any order to such effect having been passed by the competent authority.

As regards the injunction order passed by the civil court, it is evident from the order dated February 03, 2020, a photocopy of the certified copy of which has been annexed to the writ petition, that both the parties to the suit were directed to maintain *status quo* in respect of the nature, character and possession in respect of the suit property till disposal of the suit. However, the subsistence of a *status quo* order shall not be disrupted merely by giving a new electricity service connection to the petitioner, since it does not tantamount to disturbing the nature, character and/or possession of the parties in respect of the suit property in any manner. The petitioner, as a settled occupant of a portion of the property-in-question, is entitled under Section 43 of the Electricity Act, 2003 to get an independent electricity connection in his name.

Irrespective of the subsistence of the *status quo* order, such right of the petitioner, as contradistinct

from that of the private respondent, cannot be disputed in law. Insofar as consideration of equity is concerned, contrary to the argument of the private respondent, equity and good conscience are clearly in favour of permitting the petitioner to get a service connection in the petitioner's own name. Despite the specific allocation of the petitioner vis-à-vis the private respondent in respect of the disputed property being in contention in the suit, the same does not take anything away from the fact that the petitioner is in occupation of at least a portion of the suit property.

Hence, in the circumstances as discussed above, WPA No.10081 of 2022 is allowed, thereby directing the CESC Limited to give a new electricity service connection to the petitioner, subject to compliance of all requisite formalities by the petitioner, and to undertake all ancillary acts for giving such connection to the petitioner within the four corners of law.

In the event any obstruction is offered by the respondent no.5 and/or her men and agents in the CESC Limited personnel giving such connection to the petitioner and taking ancillary steps therefor, it will be open to the CESC personnel to approach the respondent no.4, the Inspector-in-Charge, Bantra Police Station, Howrah for adequate police assistance.

If so approached, the respondent no.4 shall grant such police assistance as required by the CESC personnel for the limited purpose as indicated above, at the cost of the petitioner.

For the purpose of giving such connection, it will be open to the police personnel to remove any hindrance and/or padlock, if put up to the access of the CESC personnel while giving such connection.

It is clarified, however, that the electricity connection in favour of the petitioner shall be given without any prejudice to the rights and contentions of the parties in the pending civil suit and/or connected proceedings. It will be open to the courts taking up such civil matter to decide on the issues raised therein independently in accordance with law without being influenced in any manner by any of the observations made herein.

It is expected that the entire exercise shall be completed by the CESC Limited within three weeks from date.

The written instruction filed by learned counsel for the CESC Limited be kept on record.

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.)