

**In the High Court at Calcutta  
Constitutional Writ Jurisdiction  
Appellate Side**

**The Hon'ble Justice Sabyasachi Bhattacharyya**

**W.P.A. No. 12558 of 2021**

**Sujit Kumar Ghosh  
Vs.  
The State of West Bengal and others**

|                            |   |                                                                |
|----------------------------|---|----------------------------------------------------------------|
| For the petitioner         | : | Mr. Raja Biswas,<br>Mr. Abhijit Sarkar                         |
| For the State              | : | Mr. Srijan Nayak,<br>Mrs. Rituparna Maitra                     |
| For the WBSEDCL            | : | Mr. Sourav Choudhuri                                           |
| For the private respondent | : | Mr. Srijib Chakraborty,<br>Mr. Avirup Mondal,<br>Mr. Anand Jha |
| Hearing concluded on       | : | 15.02.2022                                                     |
| Judgment on                | : | 22.02.2022                                                     |

**Sabyasachi Bhattacharyya, J:-**

1. The writ petitioner is in occupation of a flat at Premises No.33, Rabindra Sarani, Word No.4, Ranaghat (M) and is also the promoter of the said building. The petitioner deposited quotation fee for installing new transformer before the concerned authorities. The representation along with a No Objection, issued by the Chairman, Board of Administrator, Ranaghat Municipality on February 1, 2021,

was also submitted by the petitioner for having an electricity transformer installed in front of the said building.

2. However, despite the required formalities having been complied with the petitioner, it is alleged that the West Bengal State Electricity Distribution Company Limited (WBSEDCL) has not installed such transformer or provided electricity connection as yet to the individual flat owners of the building.
3. Learned counsel appearing for the distribution licensee submits that due to resistance offered by private-respondent no. 7 such connection could not be given upon installing the required transformer, as per the petitioner's application.
4. Learned counsel appearing for the respondent no. 7, on the other hand, submits that the building-in-question is an illegal construction. The petitioner himself violated municipal laws in raising such construction, for which a Demolition Notice was also issued against the petitioner.
5. As such, it is argued that the petitioner is not entitled to get electricity connection to such unauthorised construction.
6. Learned counsel for the respondent no. 7 cites a Co-Ordinate Bench judgment of this court, rendered in *Shanti Devi Agarwal Vs. W.B.S.E.D.C.L. and others*, reported at (2016) 5 CHN (Cal) 274, wherein a learned Single Judge of this Court held that a previous Special Bench judgment of this Court, delivered at Port Blair, being that of *Abhimanyu Mazumdar Vs. Superintending engineer*, reported at (2011) 2 CHN (Cal) 768 (also in AIR 2011 Cal 64), did not, for a

moment, deal with the state and condition of a premises before it could be granted electricity connection.

7. The learned Single Judge elaborated the attributes of 'settled possession' and posed the question that, if a building is not allowed to be occupied or when the law prohibits water connection to be granted to it for lack of an occupancy certificate, can an occupier of that building or part of it claim electricity supply? *Abhimanyu Mazumdar's* case (supra) was distinguished on the interpretation of 'settled possession', which was a pre-supposition, according to the learned Single Judge, of Section 43(1) of the Electricity Act, 2003 (hereinafter referred to as 'the 2003 Act'). Ultimately, the co-ordinate bench held, in paragraph no.31 of its judgment, that, on the existing facts, no electricity connection could have been given to the second and third floors. Learned counsel for the private respondent submits that, in the present case as well, no occupancy certificate has been issued in respect of the building for which electricity connection has been sought.
8. Upon hearing learned counsel for the parties, it transpires that the petitioner is not only the promoter but the owner of some of the flats in the building-in-question. Secondly, the application of the petitioner for giving individual electric connections to each of the flat owners from a transformer, to be installed near the premises, would obviously benefit not only the petitioner but all the flat owners, who had been handed over possession on the basis of legally valid

agreements. The legality of such agreements has not been challenged before any court of law.

9. In such a scenario, we have to interpret Section 43 of the 2003 Act in the context of the cited judgment.
10. Section 43 of the 2003 Act clearly provides that every distribution licensee shall, on an application by the owner or 'occupier' of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply.
11. It may be noted here that the term 'occupier' has not been qualified in Section 43 by the term 'lawful' or any other adjective. Hence, it cannot be insisted that the occupier of the premises has to be in lawful occupation thereof.
12. The Special Bench judgment of *Abhimanyu Mazumdar* (supra), which was relied on by the learned Single Judge while delivering the *Shanti Devi Agarwal* (supra) judgment, clearly defines an "occupier", as contemplated within the meaning of Section 43 of the 2003 Act, as a person in "settled possession". The said phrase was considered in the light of several Supreme Court judgments. It is clear from the report that "settled possession" was deemed as "actual physical occupation", as opposed to 'lawful' occupation. It was held in the said Special Bench judgment that the Rules do not provide for deciding any dispute between the owner and the lawful occupier on the question whether the occupation of such occupier is lawful or not. The Rules, on the other hand, prescribe the procedure for resolving the dispute between the licensee in one hand and owner or the occupier on the

other, regarding alteration of work or fixation of support, etc., or payment for compensation by the licensee to the owner or the occupier, as the case may be.

13. The word “lawful occupier”, as introduced in the Rules, in the opinion of the Special Bench, indicated that the legislature intended to mean the “actual occupier in settled possession” of the property. The Special Bench observed, whether the occupation of a person on a property is lawful or not can only be decided by a competent forum prescribed by law and that it was never the intention of the legislature in defining the word ‘occupier’ as “lawful occupier” to ask the licensee to take permission before undertaking any work from the person in occupation, if such person is not the owner, after being satisfied that such occupier has been declared as “lawful occupier” by a competent forum prescribed by law. An occupier with perfect legal title to occupy is not the only occupier entitled to get electricity connection. It was also held that a landlord can, in case of a dispute with a tenant, by taking advantage of such interpretation, easily raise false dispute as regards the status of the tenant and ask the licensee not to grant connection of electricity so long the status of such tenant is not declared by a civil court as lawful.
14. The Special Bench went on to hold that, according to the law in India, a person in settled possession of immovable property cannot be dispossessed otherwise than by due process of law and such a person, in settled possession, although the commencement of such possession was unlawful, can restrain even the lawful owner from

disturbing his settled possession otherwise than in due process of law.

15. Upon such clear dictum having been pronounced by the Special Bench, it could not, in my humble opinion, be held that an occupier has to be in lawful occupation as declared by any competent court or forum, to be entitled to get electricity connection under Section 43 of the 2003 Act.
16. Even in *Shanti Devi Agarwal* (supra), the learned Single Judge had permitted the petitioner to continue enjoying electricity, since the objection thereto was taken by a person who himself was a party to the illegality, having obtained sub-lease of the entire building which was illegally constructed.
17. The facts of the present case do not even tally in any manner with the illustrations given in paragraph no.29 of *Shanti Devi Agarwal* (supra). The first example was that of an imminently dangerous building, without considering the state and condition of the premises before granting electricity connection. In the opinion of the learned Single Judge, the same principle was applied to a building which was patently illegal, that is, without a sanction plan or a building permit or without the permission to occupy.
18. As distinguished from the above facts, in the present case, the individual flat owners had all entered into possession of their respective flats in the building-in-question on the basis of valid agreements/deeds with the promoter/writ petitioner. The beneficiary of the individual electricity connections, as sought by the petitioner,

would be all such flat owners, including the writ petitioner, who had validly entered into possession and have been in settled possession of their respective flats in the building, irrespective of the alleged illegality or absence of occupancy certificate. Unless the building is demolished or the occupants are evicted by due process of law, the occupants are legally entitled to electricity supply, both under Section 43 of the 2003 Act and by virtue of Article 21 of the Constitution of India.

19. Thus, in the instant case, the proposition laid down in *Abhimanyu Mazumdar* (supra) is squarely applicable, whereas *Shanti Devi Agarwal* (supra) is not attracted at all, in view of the gross factual differences between the two.
20. In the present case, there is no doubt that all the flat owners are in settled possession. It has not been established finally that the building-in-question was constructed *de hors* a valid sanction plan or illegally.
21. The petitioner has complied with all formalities for installation of a transformer for the purpose of giving individual electric connections to the flat owners. In fact, if the flat owners are compelled to continue enjoying the service connection existing at present, they will have to bear prohibitive and exorbitant charges unnecessarily, as opposed to individual domestic connections from a new transformer. The other option for the occupants would be to make do without electricity, which is a basic necessity of modern life and an essential corollary to the right to life guaranteed by our Constitution.

- 22.** In such view of the matter, the objection taken by the private respondent is not sustainable in law.
- 23.** Hence, W.P.A. No. 12558 of 2021 is allowed, directing the WBSEDCL to complete all formalities for installation of the new transformer and to give individual electricity connections to the flat owners of the premises, subject to the satisfaction of the distribution licensee as regards the individual applicants being in settled possession of the premises and the compliance of all requisite formalities, as expeditiously as possible.
- 24.** In the event any obstruction is raised by the private respondent no. 7 and/or his men and agents, it will be open to the WBSEDCL personnel to approach the nearest police station for adequate assistance. If so approached, the Officer-in-Charge/Inspector-in-Charge (as applicable) of the local police station shall give necessary police assistance at the cost of the petitioner.
- 25.** It is made clear that this Court has not gone into the question of legality of the construction and it will be open to any competent legal forum to decide on such question independently and in accordance with law, without being influenced in any manner by any of the observations made herein. However, the WBSEDCL shall not embark on the journey of assessing the “lawfulness” of the construction at all, which would be entirely beyond the domain of consideration of the licensee.

- 26.** There will be no order as to costs.
- 27.** Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

**(Sabyasachi Bhattacharyya, J.)**