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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 11469 of 2022

Sk. Samiullah
Vs.
The Chairman, CESC Limited & Ors.

Mr. Kajal Mukherjee,
Mr. Bikash Chakraborty,
Ms. Pallavi Ghosh,
Mr. Palah Bepari,
Mr. Tanmoy Khan
...for the petitioner

Mr. Pathik Bandhu Banerjee
...for the CESC Limited

Mr. Arijit Sarkar
...for the respondent no. 5

Liberty is granted to the petitioner to amend the cause title of the writ petition during the course of the day.

Learned counsel appearing for the petitioner contends that despite the petitioner having duly applied for a separate electricity connection at the disputed property, where the petitioner is in settled occupation as the co-owner, the CESC Limited has not given such connection and have asked for certain documents, including certified site plan, deeds/partition deeds, municipal tax receipt and ownership document for the

purpose of giving electricity connection. Out of those, only the municipal tax receipt was furnished by the petitioner.

Learned counsel appearing for the private respondent no. 5 submits that the private respondent has no objection otherwise since, admittedly, the writ petitioner is a co-owner and a partition suit is pending between the parties before a competent civil court. However, it is submitted that the petitioner resides at a different address than the property where the electricity connection has been sought. It is further contended that since the existing meter board is virtually in the drawing room of the private respondent, the private respondent insists that the petitioner's connection, even if given, be given in the portion of the property which is occupied by the petitioner.

Learned counsel appearing for the CESC Limited submits that since the Aadhaar Card produced by the petitioner at the relevant juncture indicates that the petitioner resides at a different address than the address where electricity connection has been sought, the CESC Limited, in due discharge of its duty as a distribution licensee, sought to ascertain the proof of possession of the petitioner in respect of the property in any manner whatsoever.

In reply, learned counsel for the petitioner submits that the property is an ancestral one and the document of title is not available readily. However, a municipal tax

receipt has been produced by the petitioner as per the demand of the CESC Authority.

Upon hearing the contentions of the parties, it is seen that two documents in respect of property tax receipt have been handed over to Court. In one, handed up by learned counsel for the private respondent no. 5, only the name of Sk. Jhunu, respondent no. 5 herein, appears as the name of assessee, whereas in the other, which is relied on by the petitioner, the petitioner's name finds place as a co-owner of the property along with others.

Although the Aadhaar Card address of the petitioner does not tally with the address of the property where electricity connection has been sought, it does not necessarily indicate that the petitioner is not in possession of the latter, even as a co-owner. In any event, it is well-settled that the possession of every co-owner is deemed to be possession on behalf of all the co-owners. That apart, since the private respondent does not dispute that the petitioner is a co-owner and since a partition suit is pending before a competent civil court, in view of the petitioner having produced a municipal tax receipt showing his co-ownership, sufficient *prima facie* material has been furnished to the CESC Limited for the purpose of giving electricity connection to the petitioner.

Moreover, under Section 43 of the Electricity Act, 2003, as rightly submitted by learned counsel for the petitioner, the petitioner, as a settled occupant of the

property in the capacity of a co-owner, is entitled to get electricity connection.

In the above circumstances, there cannot be any hindrance for the CESC Authority to give such connection to the petitioner.

Accordingly, W.P.A. No. 11469 of 2022 is disposed of by directing the CESC Limited to give electricity connection to the petitioner at the premises-in-question, that is, 82/64, Old Rashkhola Road, Kolkata 700 016, subject to compliance of all formalities by the petitioner, in the petitioner's own name, from the existing meter board position at the premises.

In the event any obstruction is made to such endeavour of the CESC personnel, it will be open to the said personnel to approach the respondent no. 4, that is, the Inspector-in-Charge, Khardah Police Station, for adequate police assistance.

If so approached, the respondent no. 4 shall act on the written communication of the learned Advocate for the petitioner, coupled with a server copy of this order, without insisting upon prior production of a certified copy thereof, and provide such police assistance at the cost of the petitioner.

It is made clear that the electricity connection, as and when given to the petitioner, shall not create any special equity, right or interest in favour of the petitioner in respect of the property and the civil court shall decide

the partition suit and all interlocutory applications in connection therewith without being influenced in any manner merely by the factum of electricity connection being given to the petitioner.

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 of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)