

AD. 8.
June 30, 2022.
MNS.

WPA No. 11518 of 2022

Meghnath Mondal
Vs.
The West Bengal State Electricity
Distribution Company Limited and others

Mr. Sujit Bhunia,
Mr. Gourab Ghosh
...for the petitioner.

Mrs. Gopa Roy
...for the WBSEDCL.

Mr. Rabindranath Mahato,
Mr. Aritra Shankar Roy
...for the respondent no. 6.

Learned counsel for the petitioner contends that the petitioner is in occupation of the premises where the petitioner sought an electricity connection in the petitioner's own name. However, the West Bengal State Electricity Distribution Company Limited (WBSEDCL) is not being able to give such connection to the petitioner on the premise that litigation is pending in respect of the property.

Learned counsel for the petitioner submits that the petitioner has a right under Section 43 of the Electricity Act, 2003 (2003 Act) to get an electricity connection in the petitioner's own name.

Learned counsel appearing for the private respondent no. 6 quite ably argues that the occupation of the writ petitioner cannot be said to be "settled occupation", since the threat of eviction is

looming large due to the subsistence of the injunction decree obtained by the private respondent against the petitioner before a competent civil court.

In such context, learned counsel places reliance on a judgment reported at *AIR 2011 Cal 64 (FB) (Abhimanyu Mazumdar Vs. Superintending Engineer)*, wherein a Full Bench of this Court had categorically considered and laid down the connotation of the expression “actual occupier in settled possession”.

In the said judgment, it was held by the Full Bench, *inter alia*, that, by the word “lawful occupier” introduced in the Rules, that is, the Works of Licensees Rules, 2006, the legislature intended to mean the “actual occupier in settled possession” of the property and the licensee is required to take the permission of such a person in settled possession of the property if the property is not in possession of the owner. Whether the occupation of a person on a property is lawful or not can only be decided by a competent forum prescribed by law. It was never the intention of the legislature to define 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.

The Full Bench also held that, if the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to law; he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injuncting even a rightful owner from using force or taking law in his own hands and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force.

The Full Bench further observed that it is the settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the true owner.

Learned counsel for the private respondent places particular reliance on certain yardsticks to define the expression “settled possession”, which were laid down by the Full Bench.

The said criteria are as follows:

“(i) that the trespasser must be in actual physical possession of the property over a sufficiently long period;

(ii) that the possession must be to the knowledge (either express or implied) of the owner or

without any attempt at concealment by the trespasser and which contains an element of *animus possidendi*. The nature of possession of the trespasser would however, be a matter to be decided on the facts and circumstances of each case.

(iii) the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced to by the true owner; and

(iv) that one of the usual tests to determine the quality of settled possession, in the case of cultivable land, would be whether or not the trespasser, after having taken possession, had grown any crop. If the crop had been grown by the trespasser, then even the true owner has no right to destroy the crop grown by the trespasser and take forcible possession”.

Although learned counsel for the private respondent lays stress on the phrase “sufficiently long period” to qualify the possession of a trespasser for the purpose of holding that the trespasser is in settled possession, it is evident from the entire discussion of the Full Bench that the Full Bench clearly and specifically distinguished between the concepts of “settled possession” and “lawful occupier”.

Hence, contrary to the submission of learned counsel for the private respondent, it cannot be said

that merely because the writ petitioner could be termed as an “unlawful occupier” in view of the subsisting decree of permanent injunction against the writ petitioner, the settled nature of the occupation of the petitioner can be called in question for ascertaining the right of the petitioner conferred by Section 43 of the 2003 Act.

In the present case, since the private respondent has admittedly filed a suit for recovery of possession against the petitioner, the fact that the petitioner is in occupation of the property, that too in settled occupation, cannot be disputed, rather the same has been admitted by way of filing the suit for recovery of possession.

Hence, the submission of the private respondent to the extent that the writ petitioner, being an unlawful occupier, is not entitled to electricity, cannot be accepted.

Thus, upon hearing learned counsel for the parties, WPA No. 11518 of 2022 is disposed of, thereby directing the Distribution Licensee to give electricity connection independently in the petitioner’s own name, in terms of the application of the petitioner made for such purpose, subject to compliance of all formalities by the petitioner otherwise, within a week from the date of compliance of such formalities or this order, whichever is later.

In the event any resistance or hindrance is faced by the personnel of the WBSEDCL in giving such connection to the writ petitioner, it will be open to the personnel of the WBSEDCL to approach the respondent no. 5, the Officer-in-Charge, Debra Police Station, for adequate police assistance at the cost of the petitioner.

If so approached, the respondent no. 5 shall act on the written communication of the learned Advocates for the parties, accompanied by a server copy of this order, without insisting upon prior production of a certified copy thereof, for the purpose of compliance of the same.

It is made clear that in the event any padlock or hindrance is put up to the access of the WBSEDCL personnel for the limited purpose of giving such electricity connection to the petitioner, it will be open to the police authorities to break open the padlock or remove any hindrance in the way of access to the WBSEDCL personnel for the limited purpose of enabling the WBSEDCL personnel to give electricity connection to the petitioner.

It is made clear that the factum of electricity connection being given to the petitioner shall not, by itself, create any special right or equity in favour of the petitioner and it will be open to the civil courts, before which any litigation is pending in respect of the property, to decide such *lis* independently 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.)