

AD. 19.
February 11, 2022.
MNS.

(Through Video Conference)

WPA No. 13993 of 2021

Md. Alam
Vs.
The Chairman, West Bengal State Electricity
Distribution Company Limited and others

Mr. Sudip Ghosh Chowdhury,
Mr. Abhishek Bose

...for the petitioner.

Mr. Srijan Nayak,
Mrs. Rituparna Maitra

...for the WBSEDCL.

Mr. Tanmoy Mukherjee,
Mr. Kajal Roy

...for the private respondent.

Leave is granted to the learned Advocate-on-record for the petitioner and the private respondent no. 5 to rectify the respective cause titles of the affidavit-in-reply and the affidavit-in-opposition filed today.

Pursuant to such corrections having been effected by the learned Advocates, the opposition and reply are kept on record.

The grievance of the petitioner is that petitioner, despite being in established occupation of the premises-in-dispute, is being refused a new

electric connection in his name primarily due to resistance created by the private respondent.

Learned counsel appearing for the distribution licensee submits, as corroborated by the report filed by the distribution licensee, that the distribution licensee, *prima facie*, is of the opinion that the petitioner is in occupation of the premises, but there are several defects in the application filed by the petitioner. In the event a proper application is filed in appropriate format and the other requisite formalities are complied with, the distribution licensee has no objection to give such connection subject to the order passed by the Court.

Learned counsel appearing for the private respondent, by placing reliance on the purported agreement annexed by the writ petitioner to the writ petition as well as the affidavit-in-reply, granted by one Uday Chakraborty in favour of the petitioner, argues that it is evident from the said document itself that the deed of arrangement contained in the agreement is preceded by the name of one Manik Lal Chakraborty, who has been described as the owner of the property as well as the executant of the arrangement.

However, it is submitted that the body of the said document shows that one Uday Chakraborty, son of Manik Lal Chakraborty granted the property for the enjoyment and occupation of the petitioner.

Such discrepancy, *ipso facto*, leads to the presumption, as per the petitioner's submission, that the document is a manufactured one for the specific purpose of filing the writ petition.

That apart, learned counsel for the private respondent further adds, the rent receipts produced by the petitioner are mostly in the name of the father of Uday Chakraborty (since deceased), who was initially claimed by the petitioner to be the person who settled the property in favour of the petitioner, as per the communication annexed by the petitioner to the writ petition, which was addressed to the distribution licensee. However, subsequently, in order to vindicate the veracity of the document, the petitioner has deviated from the original stand that Manik Lal was the person who settled the property and stated in the reply that Manik Lal's son Uday, who was the admitted original owner, settled the property in favour of the petitioner. Hence, it is contended that the petitioner is unsure about the derivation of this own title and not in "settled possession" of the property-in-dispute.

Learned counsel places reliance on a judgment of the Special Bench of the Port Blair Circuit Bench of this Court, rendered in *Abhimanyu Mazumdar Vs. Superintending Engineer*, reported at 2011 (2) CHN (Cal) 768, where a three-Judge Bench of this Court was pleased to hold that by the words

“lawful occupier” introduced in the connected Rules, 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.

It is contended that the present petitioner has not been able to establish even *prima facie* that the petitioner is in such settled possession of the property.

Learned counsel appearing for the petitioner also places reliance on the rent receipts and the purported agreement produced by the petitioner and submits that those documents create a sufficient presumption of occupation of the petitioner, which is sufficient for the purpose of getting electricity in terms of the right conferred under Section 43 of the Electricity Act, 2003 (in short “the Act of 2003”).

Learned counsel appearing for the petitioner also places reliance on a Division Bench judgment of this Court in *Amarendra Singh Vs. Calcutta Electric Supply Corporation Ltd.*, reported at *AIR 2008 (Cal) 66* and a co-ordinate Bench judgment rendered in *Santosh Jaiswal Vs. CESC Limited*, reported at *2008 (4) CHN 630* in support of the proposition that Section 43 of the Act of 2003 confers sufficient right on a person in occupation of a premises to have an electric connection thereto. The Division Bench went

on further to hold that the right to have a supply of electricity is a component of Article 19(1) of the Constitution of India.

Upon considering the submission of learned counsel for the parties, it appears from the purported agreement annexed by the petitioner to the writ petition as well as the affidavit-in-reply that one Uday settled the property in favour of the petitioner initially.

The private respondent, on the other hand, claimed title to the property through a transfer deed executed by the heirs of the said Uday and virtually admitted the title of Uday at the relevant point of time. After the demise of Uday subsequently, according to the private respondent, the private respondent took possession pursuant to the purchase deed and has been in possession of the premises-in-dispute, and not the petitioner.

However, it is evident from the said document itself that a *prima facie* presumption of occupation of the petitioner is sufficiently established thereby. The discrepancy as regards the mention of the name of one "Manoranjan" as the owner, in a disjunctive line above the main text of the said document, is superfluous and *ipso facto* cannot create a presumption of the document being a manufactured one, unless proved to be so, upon pleading particulars of the alleged fraud and furnishing proof of the same before a competent court of law.

That apart, Uday's father, deceased Manik Lal Chakraborty, had issued rent receipts in favour of the petitioner, which is *prima facie* established by the photocopies of such receipts annexed to the writ petition. It would be too much of a stretch on imagination to assume that all the rent receipts as well as the agreement were manufactured by the petitioner for the mere purpose of filing the writ petition for getting electric supply.

In fact, a computerized electricity bill issued by the distribution licensee has also been annexed to the writ petition, which indicates that the petitioner had enjoyed electric connection through one Manik Lal, in whose name the receipt was given. Such annexure finds place at page 16 of the writ petition. Although, at page 15 of the writ petition annexes another purported printout of an electricity receipt in the name of the private respondent, the production of such receipt from the custody of the writ petitioner *ipso facto* does not disprove the occupation of the petitioner inasmuch as there is a reasonable probability of the electricity, which was transferred subsequently in the name of the private respondent, having been initially used by the petitioner as averred.

It is specifically contended by the petitioner that the private respondent has disconnected the electric supply in the private respondent's name,

which *ipso facto* gave rise to the petitioner's entitlement to apply for a new electric connection in his own name.

The factum of such disconnection, which is not disputed by the distribution licensee as well, goes on to show *prima facie* that the private respondent is not in requirement of the electric connection at the premises, which also materially corroborates, at least circumstantially, the claim of the petitioner's occupation in respect of the premises. In view of the preponderance of probability, which arises from the existence of several documents, as indicated above, in favour of the settled possession of the petitioner, there is no scope for the writ court and/or the distribution licensee to hold otherwise.

That apart, since the distribution licensee raises no objection on such score, it cannot be presumed without any basis that mere existence of the purchase deed of the private respondent washes away the presumption of occupation of the petitioner. That apart, the dispossession of the petitioner is not proved, even *prima facie*, by the private respondent by any cogent evident. In the absence of the same, the claim of possession of the petitioner is further bolstered, at least at a *prima facie* level.

The bald allegation of the private respondent as regards the documents having been manufactured by the petitioner is not credible enough to denude the

petitioner from entitlement to get electric supply as per Section 43 of the said Act of 2003.

However, since the West Bengal State Electricity Distribution Company Limited (in short 'WBSEDCL') takes specific objection to the defects in the application filed by the petitioner, the petitioner ought to be given an opportunity to file a fresh application in correct format.

Accordingly, WPA No. 13993 of 2021 is allowed, thereby directing the petitioner to apply for an electric connection afresh in appropriate format before the WBSEDCL within a week from date. If such application is made by the petitioner and subsequent formalities are duly complied with by the petitioner, the WBSEDCL shall give such electric connection, upon holding an appropriate inspection, if necessary, as expeditiously as possible from the compliance of all formalities by the petitioner.

However, it is made clear that this order shall not create any special equity or right in favour of the petitioner and/or prejudice the rights and contentions of the parties in the dispute raised by the private respondent to trade licence being issued to the petitioner in respect of the premises and/or before any other forum in any manner whatsoever. It will be open for the forums/courts to decide whatsoever dispute comes before them independently without

being influenced in any manner by any the observations made herein.

It is further clarified that the aforesaid direction shall be complied with by the WBSEDCL even irrespective of any way leave certificate having been issued by the private respondent in favour of the petitioner.

If necessary, the personnel of the WBSEDCL will be entitled to approach the local police authorities for adequate police assistance for giving electricity connection to the petitioner.

If so approached, the respondent no. 4, that is, the Inspector-in-Charge of Chandannagar Police Station, shall provide such police assistance at the cost of the petitioner and the police personnel shall be at liberty to remove any hindrance in the access of the WBSEDCL personnel to the meter board location for the purpose of giving electric connection 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 with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)