

11th August,
2022
(AK)
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W.P.A 17379 of 2022

Shri Dipak Paul
Vs.
The Director, CESC Limited and others

Ms. Ashrulina Amiya Gayen
...for the petitioner.

Mr. Somnath Bose
...for the CESC Limited.

Ms. Manideepa (Paul) Roy
...for the respondent no.3.

Affidavit-of-service filed in court today be kept on record.

The grievance of the petitioner is that the petitioner, despite residing at the premises-in-question allegedly as a joint owner, is being deprived of new electricity connection.

Initially the petitioner had applied and such application was refused by the CESC Limited. However, subsequently the wife of the private respondent was given an independent electricity connection in her name in the private respondent's portion of the property.

Prompted by such connection being given, the petitioner made a fresh application for getting new electricity connection. However, such connection has not been given by the CESC Limited on the premise that litigation is pending between the parties.

Learned counsel appearing for the CESC Limited submits that the Distribution Licensee is caught in the cross-fire of litigation between the petitioner and the private respondent and shall abide by the law.

Learned counsel appearing for the respondent no.3, on instruction, submits that the petitioner is not a co-owner but was a mere licensee in respect of the premises, of which the private respondent is the owner.

It is submitted that the private respondent is enjoying a decree of a competent civil court for eviction and recovery of *khas* possession against the defendants in respect of Schedule-B property in the suit, which is in occupation of the petitioner.

Hence, it is submitted that the petitioner ought not to be granted an electricity connection, taking advantage of which the petitioner may further disrupt the peaceful possession and enjoyment of the premises of the private respondent.

Learned counsel for the petitioner, in reply, submits that the petitioner has filed an appeal against the decree, which is now pending.

It is well-settled that filing of an appeal does not, by itself, operate as stay of the impugned decree. In the instant case, the plaintiff/respondent no.3 is at present enjoying a decree of eviction and recovery of *khas* possession against the defendants in respect of Schedule-B property.

Despite the pendency of the appeal, nothing has been brought before court to indicate that any stay order has been passed therein.

However, it is also well-settled that a person in settled occupation of premises is entitled to electricity, irrespective of the lawfulness of such possession.

Hence, strictly speaking, although the judgment-debtor/petitioner is not occupying the premises 'lawfully' at present, such fact cannot create any hindrance in the petitioner's right to get electricity connection under section 43 of the Electricity Act, 2003 and generally conferred by Article 21 of the Constitution of India.

Accordingly, WPA 17379 of 2022 is disposed of by directing the CESC Limited to give new electricity connection to the petitioner at the premises from the existing meter board position, subject to compliance of all formalities by the petitioner in that regard.

It is made clear that such electricity connection, if given to the petitioner, shall not create any special right or equity with regard to the petitioner in respect of the property and shall not influence the appellate court in deciding the appeal independently.

It is further clarified that it will be open to the private respondent to approach the appellate court in the event any hindrance to the peaceful enjoyment of the private respondent is created on the pretext of the new

electricity connection being given from the existing meter board position in favour of the petitioner.

In the event any obstruction is raised by private respondent no.3 and/or his men and agents in the CESC personnel holding inspection or giving such connection to the petitioner, it will be open to the CESC personnel to approach the local police station for adequate police assistance in that regard.

If so approached, the local police shall give such assistance to the CESC personnel for the limited purpose of holding inspection and/or giving such electricity connection to the petitioner from the existing meter board position.

Such police help shall be given at the cost of the petitioner.

There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)