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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 18692 of 2022
with
W.P.A. No. 18694 of 2022

Kamal Sardar
Vs.
West Bengal State Electricity
Distribution Company Limited & Ors.

Mr. Sanjib Bandyopadhyay,
Mr. Ashok Kumar Singh
... for the petitioner in both
... the writ petitions

Mr. Srijan Nayak,
Ms. Rituparna Maitra
...for the WBSEDCL in both
the writ petitions

Mr. Manik Lal De,
Mr. Dwarikanath Mukherjee
...for the State in
WPA 18692 of 2022

Mr. Prasanta Kumar Giri,
Ms. Sanjukta Samanta
...for the State in
WPA 18694 of 2022

Mr. Rudradeb Chaudhuri,
Mr. K.N. Jana
...for the private respondent
in both the matters

In Re.: W.P.A. No. 18692 of 2022

Learned counsel for the petitioner submits that
without the petitioner granting any Way-Leave
Certificate, the West Bengal State Electricity
Distribution Company Limited (WBSEDCL) is trying to

give electricity connection to the private respondent no. 11, M/s. Devaloke Developers Limited, being a turnkey project casting several liabilities on the developer. It is further submitted that at present a partition suit is pending at the behest of the petitioner, claiming that the petitioner is a co-owner of the property-in-question in Dag No. 434. However, it is submitted that the rights of the petitioner are being grossly violated.

Learned counsel appearing for the respondent no. 11 contends, by placing reliance on the documents and pleadings annexed and averred in his affidavit-in-opposition, that the petitioner does not have an iota of right, title and/or interest in the said property, which was purchased by the petitioner.

By placing reliance on the sale deed of 1971, annexed at page 34 of the affidavit-in-opposition, learned counsel contends that the petitioner's father had purchased a demarcated portion of Dag No. 434, which was sold to the respondent no. 11 vide deed dated January 31, 2007 (Annexed at page 39 of the affidavit-in-opposition).

The maps annexed at pages 38 and 46 of the affidavit-in-opposition, which are parts of the said two deeds respectively, clearly indicate that the respondent no. 11 had purchased from the vendor, the petitioner's father, a clearly demarcated portion of the property.

Further documents annexed to the affidavit-in-opposition go on to show that three days prior to the sale of the demarcated property to the respondent no. 11 by the petitioner's father, Year Ali, a Memorandum of Understanding had been entered into on January 29, 2007, inter alia, by the present writ petitioner, who described himself to be an "agent", in other words, a broker in the transaction-in-question.

Documents are also annexed to the affidavit-in-opposition to indicate that the petitioner had specifically agreed to the mutation of the property in the name of the respondent no. 11 and for the purpose of conversion of the said property to raise a construction thereon. It is contended that now, at the eleventh hour, when the project is complete and the sales-in-question are going to be made, the petitioner has filed several writ petitions to harass the respondent no. 11. The present writ petition, it is submitted, is a part of the petitioner's ploy to blackmail the respondent no. 11 and extract some benefit.

Learned counsel appearing for the WBSEDCL submits that, on an inspection, it was found that no property of the petitioner has been transgressed or that no connection of any electricity supply to the property of the respondent no. 11 is being taken over any property of the petitioner.

Learned counsel for the petitioner, in reply, denies the allegation of the WBSEDCL that an inspection was physically held at the property. That apart, he reiterates the statements made in the writ petition and submits that the petitioner is not much educated and, as such, is not well-acquainted with worldly affairs.

It is also pointed out by learned counsel for the respondent no. 11 that the documents and averments made in the affidavit-in-opposition have not been specifically denied by the petitioner in his reply. As such, it is contended that the averments in the said respondent's affidavit-in-opposition ought to be accepted as correct, by application of the doctrine of non-traverse.

It is further submitted that in view of pendency of the partition suit, any order, if passed by this Court might have an effect of pre-judging the disputes involved therein.

Heard learned counsel for the parties. After perusing all the materials-on-record it transpires that there is no substantive denial, apart from certain evasive statements, in the reply of the petitioner, which would controvert the averments and documents produced by the respondent no. 11 in support of its affidavit-in-opposition. Although it is beyond the power of the writ court to adjudicate the right, title and interest of the parties, as per the documents placed

before this Court, even applying the principle of oath versus oath, there is nothing produced by the petitioner to disbelieve the documents annexed to the affidavit-in-opposition by the respondent no. 11.

As it *prima facie* appears from the materials-on-record in the present writ petition itself, the petitioner's father had transferred a demarcated portion of the relevant Dag on January 31, 2007 in favour of the respondent no. 11, which has attained finality, since subsequent mutation and permission to convert have been obtained by the respondent no. 11, that too, as agreed to by the petitioner in writing.

Inasmuch as the petitioner's contention that the WBSEDCL did not inspect the property is concerned, the same does not have a material bearing on the issue at hand. Since the petitioner has failed to establish *prima facie* any right, title or interest, at least for the purpose of adjudication of the present writ petition, it cannot but be observed that the respondent no. 11 is entitled to get electricity connection at its premises unhindered by the objection of the petitioner.

Moreover, since the WBSEDCL has contended that the underground cables for giving electricity connection have already been laid, there cannot be any impediment for the WBSEDCL in giving such electricity connection to the respondent no. 11.

Hence, W.P.A. No. 18692 of 2022 is dismissed on contest without, however, any order as to costs.

It is made clear that the findings arrived at herein ought not to influence the civil court, where the partition suit is pending, in any manner.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

In Re.: W.P.A. No. 18694 of 2022

Upon hearing learned counsel for the parties and perusal of the materials-on-record, it transpires that the petitioner sought for an order directing the WBSEDCL not to give electricity connection to the respondent no. 11 unless the petitioner grants Way-Leave Permission in that regard.

However, upon perusal of the documents, it does not transpire that the petitioner has been able to produce, at least *prima facie* for the disposal of the present writ petition, any document regarding his right, title and interest to the property-in-question.

Inasmuch as the documents annexed to the affidavit-in-opposition are concerned, it is evident that the property-in-question was sold in a demarcated manner pursuant to an agreement where the petitioner himself was a party as an “agent” (broker).

Thereafter, the demarcated property has been mutated and converted at the instance of the private respondent no. 11 without any objection, at any stage, from the petitioner. Moreover, the laying of cables for the electrification of the project standing on the property has already been substantially completed.

Although the petitioner has pointed out that he has obtained an order from the civil court, bearing order No. 1 dated March 08, 2022 passed by the Civil Judge (Senior Division), Second Court at Baruipur in Title Suit No. 112 of 2022, it is seen from the order that the court had passed an ad interim order of injunction merely directing the plaintiff and the defendant no. 1 therein to maintain status quo in respect of their respective possession, nature and character of the suit schedule property therein.

However, it is well-settled that giving electricity connection to a property does not entail any sort of disturbance to either the possession or the nature and character of such property.

Hence, the electricity connection being given to the private respondent no. 11 shall not, in any manner, have any adverse effect on the said order or amount to disobedience of the same.

Inasmuch as the findings rendered by this Court in the present writ petition are concerned, those will

not bind the civil court while taking up the civil suit pending before it.

Accordingly, W.P.A. No. 18694 of 2022 is dismissed on contest without, however, any 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.)