

HIGH COURT AT CALCUTTA

In the Circuit Bench At Jalpaiguri

CONSTITUTIONAL WRIT JURISDICTION

Present:

THE HON'BLE JUSTICE JAY SENGUPTA

WPA 656 of 2022

Tapas Dey

Versus

The State of West Bengal & Ors.

For the petitioner : Mr. Bapi Sarkar
Mr. Tridip Bhattacharjee
...Advocates

For the WBSEDCL : Mr. Sudipta Kanta Bhoumik
Ms. Dipti Bhoumik
...Advocates

For the State : Mr. Hirak Barman
Mr. Pretom Das
...Advocates

Lastly heard on : 19.04.2022

Judgment on : 22.04.2022

JAY SENGUPTA, J.:

1. This is an application praying for a direction upon the respondent/electricity authorities to grant new electricity connection to the petitioner at the premises as mentioned in the petition.

2. Learned counsel appearing on behalf of the petitioner submitted as follows. The writ petitioner was a tenant in the premises being a plot of land forming part of RS Plot No. 339, Sheet No. 14 recorded in RS Khatian No. 493/1 under Mouja Dabgram, SMC Ward No. 35, P.S. New Jalpaiguri, District- Jalpaiguri, owned by the private respondent and her husband (since deceased). The tenanted portion is a flat measuring about 900 square feet in the ground floor of a three storied building. On 25.06.2012, the private respondent and her husband agreed to sell the premises to the petitioner and received an amount of Rs. 2.50 lakhs as an advance part consideration against a total consideration amount of Rs. 10 lakhs. A written agreement was executed in this regard. The petitioner gradually paid the entire consideration amount. After the death of her husband, the private respondent filed a suit for recovery of possession of the said premises from the petitioner in 2021 suppressing the real facts and falsely claiming that the petitioner and his wife were permissive occupiers in the said premises. The said suit being Title Suit No. 173 of 2021 is still pending. After filing the said suit, the private respondent threatened the petitioner on several occasions that she would disconnect the electricity connection at the said premises. Despite the petitioner's sending a legal notice requesting her not to do so, on 06.01.2022 the private respondent disconnected the electricity connection at the said premises. The petitioner was thus constrained to apply for a new electricity connection before the WBSEDCL by formal application on 10.01.2022 and a written communication on 15.01.2022. By its letter dated 03.02.2022, the WBSEDCL informed the petitioner that they had inspected the premises and found him in possession. Yet, they refused

to give new electricity connection to the premises for want of documents. Since 06.01.2022 the petitioner, his pregnant wife and ailing mother are living in the said premises without electricity. The petitioner has been admittedly in settled actual physical possession in the said premises for more than 20 years and is, thus, entitled to get electricity connection in terms of Section 43 of the Electricity Act, 2003. In fact, the petitioner is in settled possession or effective possession without title which would entitle him to protect his possession even as against the true owner. Reliance is placed on *Rame Gowda (D) by L.Rs. vs. M. Varadappa Naidu (D) by L.Rs.*, AIR 2004 SC 4609, *Munshi Ram vs. Delhi Administration*, (1968) 2 SCR 455, *Puran Singh vs. The State of Punjab*, (1975) 4 SCC 518 and *Ram Rattan vs. State of Uttar Pradesh*, (1977) 1 SCC 188. Reliance is also placed on the decision of this Court in *Abhimanyu Mazumder vs. The Superintendent Engineer and Another*, AIR 2011 Cal 64.

3. Learned counsel appearing on behalf of the respondent no. 5 submitted as follows. First, the son and the daughter of the private respondent were not made parties to the writ petition. Secondly, the contention of the petitioner regarding his entitlement to possess the purported tenanted portion is disputed. The petitioner had illegally occupied the ground floor of the premises and also did some illegal construction without the permission of the private respondent no. 5. Thus, the petitioner is an illegal occupier of the said premises. The petitioner has not shown any document to prove that he was a tenant as alleged by him in the writ petition. Therefore, he is not entitled to get electricity connection under

Section 43 of the Electricity Act. Reliance is placed on the decision of this Court in *Anjali Metia and Others vs. State of West Bengal State Electricity*, 2006 (4) CHN 433, *Samsul Haque Mollick vs. CESC Ltd.*, AIR 2006 Cal 73 and *Debadas Biswas vs. West Bengal State Electricity*, AIR 2008 Cal 29. In the alternative, the respondent shall always be at liberty to take appropriate steps to recover possession from the petitioner in accordance with law.

4. Learned counsel for the respondent nos. 1, 2 and 3 submits as follows. It is true that the petitioner was found to reside at the said premises and it will not be difficult to provide electricity at the said premises at least from the technical angle. However, there is a pending litigation regarding the title to the said property.

5. I have heard the submissions of learned counsels appearing on behalf of the petitioner and the respondents and have perused the writ petition and the written notes of arguments filed on behalf of the petitioner and the respondent no. 5.

6. First, it is evident that as regards the ownership of the property in question, the respondent no. 5 is the one who is acting as the landlord. In fact, in her written notes it has been stated that the present petitioner had done some illegal construction without the permission of the said respondent no. 5. Therefore, in the present facts and circumstances, which involve an urgent issue like grant of electricity connection to purported occupiers of premises, the son and the daughter of the respondent no. 5 need not be joined as parties.

7. The petitioner and the respondent no. 5 are adversely claiming rights in respect of the property in question. A civil suit filed by the respondent no. 5 is pending in this regard. Therefore, the rights of the parties in respect of the said premises are yet to be decided finally.

8. On the other hand, the electricity authorities have found the petitioner to be residing at the premises in question. It is the case of the petitioner that he had been residing at the said premises as a tenant for the last 20 years. It is the further case of the petitioner that since the respondent no. 5 had disconnected the electricity connection at the said premises, he, his pregnant wife and his ailing mother had been living at the said premises without any electricity.

9. In view of the above, it cannot be said that the petitioner is an illegal occupier of the premises who is not entitled to electricity connection under Section 43 of the Electricity Act. On the contrary, it appears that the petitioner is, in fact, in a settled possession and the rights of the adverse parties in respect of the purportedly tenanted portion of the premises is yet to be decided by a competent Civil Court. Till then, the basic necessities of electricity connection or water connection cannot be denied to the petitioner and his family members.

10. In view of the above and in the interest of justice, I direct the respondent nos. 1, 2 and 3 to forthwith grant new electricity connection to the present petitioner on the application that was earlier submitted by him for such purpose within a period of ten days from the communication of this

order. It will be open to the electricity authorities to approach the nearest police station for adequate assistance in this regard, if necessary.

11. However, the respondent no. 5 or any one claiming through her shall be at liberty to take appropriate steps, including pursuing the suit filed earlier, for recovery of the said premises and/or eviction of the petitioner in accordance with law. The electricity connection that is being given, pursuant to this Court's order, shall not confer any right to the petitioner more than what inheres in him otherwise.

12. With these observations, the writ application is disposed of.

13. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

14. All parties shall act on server copy of this order downloaded from the official website of this Court.

(Jay Sengupta, J.)

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