

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

231

**CWP-9987-2019 (O&M).
Date of Decision: 16.11.2022.**

Hindustan Petroleum Corporation Limited

...Petitioner

Versus

Punjab State Power Corporation Limited and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Mr. Raman Sharma, Advocate for the petitioner.

Mr. B.S. Khehar, Advocate, for respondents – PSPCL.

Mr. Nitin Sharma, Advocate,
for applicant – respondent No.3.

VINOD S. BHARDWAJ. J (ORAL)

The present writ petition has been filed under Articles 226/227 of the Constitution of India, seeking issuance of a writ of in the nature of certiorari declaring inaction on the part of the respondents for not releasing the electricity connection at the existing retail outlet of the petitioner situated in Village Behak Hasta Uttar, District Fazilka, with a further direction to the respondents to issue a new electricity connection.

A perusal of the facts show that the petitioner Hindustan Petroleum Corporation Limited (hereinafter to be referred as 'HPCL') had taken land measuring 42.68 M X 41.15 M (4 K-16M 7.5S) on a lease of 30 years vide registered lease deed dated 18.03.2005. A retail outlet was thereafter set up on the aforesaid leased land and it was allotted to one Smt. Kuldeep Kaur. An electricity connection was thereafter applied for by the allottee and was released in category of DS-NRS vide account No.Y-53GT530006Y with sanctioned load of 13.04 KV. The aforesaid leased land thereafter was sold by its owner to one Ashok Kumar son of Diwan Chand, resident of Mandi Ladhuka, vide sale deed date 13.08.2007. The aforesaid sale was subject matter of challenge before the Civil Court but the suit was later dismissed by the said Court. After the challenge to the sale deed was rejected by the Court, the Revenue Authorities carried out mutations of revenue record in favour of the subsequent purchaser. Thereafter, the land in question is claimed to have been sold by Ashok Kumar to his brother Vinod Kumar, however, no such sale deed has been laid before the HPCL – petitioner. Hence, the petitioner continued to pay the rentals to Ashok Kumar.

The dealership in favour of Smt. Kuldeep Kaur was terminated by the petitioner - HPCL through letter of termination dated 22.09.2016 and operation of the retail outlet was taken over by the petitioner - HPCL. An existing dealer has been handed over the operations of the retail outlet on Ad hoc basis as per the applicable policy till a regularly selected dealer is made available. The electricity supply was, however, disconnected on an application by the subsequent purchaser – Vinod Kumar. When the petitioner – HPCL submitted an

application for issuing new connection for the said retail outlet, an objection has been raised by the respondents-PSPCL that consent/approval of the owner is required for the purposes of release of connection.

It is contended by the petitioner that the aforesaid stand adopted by the respondents is not valid and neither is it borne out nor is it within the walls of the statutory framework. He further submits that a duly registered lease deed in favour of the petitioner is already there and it is in lawful occupation of the premises and any such condition which is now being prescribed is *per se* beyond the statutes. He further places reliance on the judgment of this Court in the matter of **Mobin Ansari Vs. Punjab State Power Corporation Limited and others bearing CWP No.13439 of 2022, decided on 23.08.2022**, wherein this Court has already ruled that the release of electricity connection cannot be denied to a person who is lawfully inducted into possession of a particular premises for want of consent/approval of the owner thereof.

Per contra, learned counsel appearing on behalf of the respondents - PSPCL has relied upon the stand taken in the written statement which reads thus:-

“4. That the above named Sh Vinod Kumar had moved an application dated 22/10/2018 (Annexure R-3) to the respondent no.2 requested not to release any electric connection at the this petrol pump along with a copy of jamabandi for the year 2013-14 dated 14/09/2018 (Annexure R-4), stating that he has purchased land measuring 04 Kanal 18 Marlas [i.e. comprised of Rect. no. 52 Killa no. 1/2(0-17) 10/1(2-16) Rect. no 53 Killa no 5/2/3

(0-3) 6/1(1-2)] situated within the revenue estate of Village Behak Hasta Uttar Tehsil & Distt. Fazilka, including the above said portion of petrol pump.

5. *That Sh. Sachin Singla, Area Sales Manager (Retail) Abohar Sales Area of the petitioner had moved an application dated 24/10/2018(Annexure R-5) along with an exclusive copy of alleged lease agreement (wrongly typed as lease deed by the petitioner) dated 15.02 2005/13.03.2018 requesting the respondent no.2 to release an electric connection for the above said retail outlet. By way issuing a memo no 2691 dated 29.10.2018 (Annexure R-6), the above said Area Sales Manager (Retail) was intimated regarding the above said application of Sh. Vinod Kumar with further request to provide (i) copy of jamabandi whereby rent was transferred to Sh. Ashok Kumar as mentioned by in its letter. (1) copy of decision dated 03/03/2010 passed by the Court of Sh. Jaskaran Singh Collector (Additional Deputy Commissioner Ferozepur), (iii) copy of revenue record/jamabandi having an entry of lease an entry of mutation in favour of company, so that the respondents could be able to forward the concerned papers to its legal advisor for further proceedings.*

6. *That by way of issuing memo no. 225 dated 15.02 2019 (Annexure R-7), the above-named Sh. Vinod Kumar was intimated as to the above said request letter of Area Sales Manager (Retail) of the petitioner and was further directed to produce copy of injunction order within 7 days to the respondent no 2, if any, to restrain the respondent to release an electric connection for the above said retail outlet. In the meantime, the above named Sh Vinod Kumar again moved an application dated 22.02.2019 along with*

copy of legal notice dated 16.11.2018(Annexure R-8) addressing the respondent as well as to the different authorities of the petitioners, at his above said same lines as requested in his earlier application.

7. That in place of completing the formalities and documents, Sh. Rajiv Bansal, Chief Regional Manager of the petitioner had sent a letter dated 31.01.2019(Annexure R-9), whereupon a memo no 224 dated 15/02/2019(Annexure R-10) was issued by the respondent no. 2 stating the above said Chief Regional Manager to provide fresh copy of jamabandi/revenue record having an entry of lease/mutation in favour of the petitioner/company along with required form etc. to apply for a new commercial connection (i.e. A & A Form duly signed by the competent authority, ID proof if signing authority & Test Report of load as required by the Company) etc. so that the respondent could proceed with the matter in order to release the above said connection. But till date not even a single condition has been fulfilled by the petitioner, rather the instant false petition has been filed by the petitioners in order to pressurize the respondents. It is worthwhile to narrate here that as per contents of para no. 1 of the petition, it is clear that the Area Sales Manager (Retail) was neither competent nor authorized person to apply the above an electric connection, who sent an application dated 24/10/2018 to release the above said connection to the respondent no. 2. It is also pertinent to mention here that the respondents never refused to release an electric connection to the petitioner. The respondents are ready to release an electric connection subject to rules and regulations of the corporation So the present petition is liable to be dismissed.”

Learned counsel, however, does not dispute the possession as laid down by this Court in the judgment of **Mobin Ansari (supra)**. He, however, contends that the petitioner has an efficacious alternative remedy available under the Punjab State Electricity Regulatory Commission (Forum and Ombudsman) Regulations, 2016, to raise his grievances before The Consumer Grievances Redressal Forum constituted under Section 2(5) of the Electricity Act, 2003.

I have heard the learned counsel for the respective parties and have gone through the averments contained in the petition along with accompanying documents.

This Court in the matter of **Mobin Ansari (supra)** has held as under:-

“14. The core issue that would emanate for adjudication is as to whether a person who is in undisputed possession of the premises and is not a rank trespasser is entitled to the release of the electricity connection, despite a challenge raised regarding the nature of his occupation.

15. It would be necessary to refer to the statutory provision. Section 43 of the Electricity Act, 2003 reads thus:-

Section 43. (Duty to supply on request): ---

(1) (Save as otherwise provided in this Act, every distribution] licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:

Provided that where such supply requires extension of distribution mains, or commissioning of

new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission:

Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.

Explanation.- For the purposes of this sub-section, “application” means the application complete in all respects in the appropriate form, as required by the distribution licensee, along with documents showing payment of necessary charges and other compliances.

(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1) :

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.

(3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default.”

(Emphasis supplied)

16. *In order to better understand the legislative intent, it would be necessary to refer to the provision as it stood in the Electricity Act, 1910, prior to the coming into force of the Electricity Act, 2003. The relevant provision contained under Section 12 (6) of the Electricity Act, 1910 is extracted as under:-*

“12. Provision as to the opening and breaking up of streets, railways and tramways.

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(6) In this section, “occupier” of any building or land means a person in lawful occupation of that building or land.

17. *A comparative reading of both the provisions shows that there is a conscious departure by the Parliament and the word “lawful” specified in the Electricity Act, 1910, has been dropped by the Parliament in the Electricity Act of 2003. The deletion has to be viewed as a conscious act of the Parliament and not just an omission.*

18. *Occupier has been defined in Section 12 (6) of the Indian Electricity Act, 1910 which reads thus:-*

In this Section 'Occupier' of any building or land means a person in lawful occupation of that building or land.”

19 *The issue came up before a Division Bench of Calcutta High Court in the matter of **Santosh Jaiswal Vs. CESC Limited and Ors. in WP No.9794 (W) of 2008, decided on 22.07.2008**, wherein, while interpreting the scope of Section 43 of the Electricity Act in the light of Section 12 (6) of The Indian Electricity Act, 1910, the High Court of Calcutta dealt with the issue as under:-*

10. At this juncture the decision of a learned Single Judge of this Court reported in 1999 (2) CHN 573:

Soumltra Bannerjee v. CESC Limited, deserves attention. While considering what 'lawful occupier' in section 12(6) of the old Act would connote, it has been held as follows:

“19. If orders are to be passed against the private respondents for the purpose of enabling public respondents to do their duty then a finding has to be reached whether the writ petitioners are lawful occupiers within the meaning of sub-section (6) of section 12 of the Indian Electricity Act, 1910.

20. If that expression is construed in a strict manner and the meaning ascribed to that expression is that the occupier is lawful, by any standards and without any doubt or dispute being there, in regard to the lawful nature of occupation, then and in that event the writ petition must fail. This is simply because no fewer than two civil suits are pending as between the warring parties here.

21. If, however, the expression lawful occupier is given a dilute meaning, in the sense that it is held as including all occupiers who are not in obviously unlawful occupation, although there might be doubts and disputes which have to be resolved later, then and in that event the writ petitioners must succeed.

22. They are not criminals; when they came into possession in the early '90s there was no force applied by them; they have come in through the promoters who were inducted by the owner/landlord; the owner/landlord being in the same premises, were aware that they are

coming into occupations at least as alleged by the writ petitioners they have made payments to the promoter for getting their flats, although lately complaints were being filed in the police station the disputes between the petitioners and the respondent No. 4 are purely of a civil nature which might go this way or that and the Writ Court is not the proper Court for making any pronouncement in that respect.

23. This situation is of common occurrence. When civil disputes are pending between two parties it is often the case that one party wants electricity connection and another party, may be the seller, may be the landlord, wishes to stop giving of such connection. In these circumstances, in my opinion, it is most inappropriate to allow any party to utilize the non-giving of essential supplies to the opposite party as a means or tool of putting extraneous pressure in the matter of resolution of civil disputes. Because of this reason I would interpret the words 'lawful occupier' in subsection (6) in a reasonably dilute manner. All occupiers who are peace loving, who have an arguable case which might succeed in the end are entitled to get electricity connection notwithstanding opposition by the opponents. In case they are thrown out they will be thrown out of duly electrified premises and that is not a matter which is likely to affect the substance of the civil dispute or litigation amongst the parties."

13.Provisions of the new Act which are considered relevant are quoted below:

“Section 43(1) - Every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:

Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission; Provided further.....”

“Section 2 (70)—Supply, in relation to electricity, means the sale of electricity to a licensee or consumer”.

“Section 2 (15)—Consumer means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be”.

“Section 2(4)—Person shall include any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person”.

14. Two broad principles/rules of interpretation are well-accepted, literal and exploring the legislative intent. Ordinarily, the plain grammatical meaning of the

legislation in question is discerned and applied. When the plain grammatical meaning leads to absurdity or ambiguity or renders the legislation unintelligible or a literal meaning could not have been intended by the legislature, a departure from literal interpretation may be made and the Courts may be justified in looking for what the legislature intended. However, in the pursuit of understanding a particular legal provision, amendment of law in the garb of interpretation is impermissible. The function of the Court is to find out what is legal and not what is right. Gap in the law has to be remedied by amending the Act and not by filling the gap by a judicial verdict. There may be exceptional situations where unless the gap is filled by judicial verdict the legislation would be rendered unintelligible or absurd and it is only in those exceptional situations that the Court may fill in such gap.

15. Keeping these well-settled principles of law in mind, this Court would proceed to examine the point in issue.

16. The word occupier in section 43(1) of the new Act has not been defined therein. In its decision in Industrial Suppliers (P) Ltd. v. Union of India, reported in AIR 1980 SC 1858, the Apex Court has held that in the legal sense an occupier is a person in actual possession.

17. Applying the literal rule, there appears to be no doubt that an occupier of a premises meaning thereby a person in possession thereof, in terms of section 43 of the new Act, is entitled to supply of electricity on request being made to the licensee and once electricity is supplied and he bears the charges therefor, he becomes a consumer of electricity. The duty of the licensee is to supply electricity, i.e. sell electricity. However, duty and/or obligation of the licensee to ascertain whether

the prospective consumer is in lawful occupation or not is not discerned in the statutory provisions.

18. In some of the decisions referred to supra, the Courts have interpreted the word 'occupier' in section 43 of the new Act to mean 'a lawful occupier'.

19. There can be no doubt that by so interpreting the word 'occupier' in section 43, the Courts have assumed existence of a word therein. Section 12(6) of the old Act provided that occupier of a building or land would mean one in lawful occupation thereof for the purposes mentioned in sub-section (2) thereof. The decisions in Associate Indian (supra), Surajbali Pandey (supra) and Alope Saha (supra) have proceeded on the basis that provisions contained in section 12 of the old Act is a bar for supplying electricity to a prospective consumer unless he proves lawful occupation of the premises at which supply is intended. Without dilating on the point of applicability of section 12 of the old Act to an application for new connection on the face of section 22 thereof, it may be noted that in repealing the old Act and introducing the new Act the legislature has consciously omitted the word 'lawful' while denoting the class of persons entitled to supply of electricity. What the legislature omitted, obviously consciously, could not have been read into the statute unless of course reading of the statute without such addition would render it absurd or unintelligible. Section 43(1) of the new Act, read as it is, does not produce absurd or unintelligible results.

20. That apart, one cannot lose sight of the fact that a person intending to enjoy electricity though alleged to be a trespasser by the owner of the premises cannot be evicted by the owner except by taking recourse to law. If

possession of such trespasser is protected till such time his eviction is ordered according to law, it defies reason as to why an embargo should be created by judicial verdict only in respect of obtaining supply of electricity. None can dispute that electricity is an essential service without which it is difficult to survive. Right to live a meaningful life and with dignity is one of the basic postulates of Article 21 of the Constitution. The right guaranteed under Article 21 is the fundamental of all fundamental rights enshrined in Chapter III of the Constitution. One cannot be deprived of such right only on the basis of an unestablished accusation that he is a trespasser which, as held in Soumitra Banerjee (supra), is commonly used as a tool or means of putting extraneous pressure for resolving civil disputes. Supply of electricity to such alleged trespasser by a licensee would neither prejudice in any manner the owner's right to have an order of eviction passed against him nor would it make any difference so far as status of the alleged trespasser is concerned. The licensee's duty is to sell electricity provided formalities are complied with. There is no justification to hold that lawful occupation of a portion of the premises is a pre-condition for obtaining supply. If the right of an owner to object to electricity being supplied to an occupier of his premises by the licensee is to be conceded on the ground that the occupier has illegally or unauthorisedly taken possession, that would necessarily lead to clothing the licensee with the right to adjudicate the occupier's right to enjoy the property which this Court is inclined to hold is not the legislative intention. The laws of the country provide for adjudication of such issue by an appropriate forum. If there is any flaw in the statute or the phrasing is defective and the need to mend it arises, it is only the

legislature that can amend it. It is the function of the Courts to expound and not to legislate is settled law. Keeping in view the scheme of the new Act, reading the word lawful before the word 'occupier' would amount to legislation by Court which is impermissible.

21. Accordingly, this Court is minded to hold that the decision of the Division Bench in Amarendra Singh (supra) and the decisions of the learned Single Judges in Soumitra Bannerjee (supra) and Moloy Kumar Acharya (supra) are better in point of law and this Court would prefer the views expressed therein to the views expressed by the Hon'ble Division Bench in Anjali Metia (supra) and the decisions of the learned Single Judges in Samsul Haque Mullick (supra), Debadas Biswas (supra) and Gyanendra Nath Shil (supra). It is further held that an applicant for supply of electricity if found to be in actual possession of any portion of a premises at which supply has been prayed is entitled to such supply without any duty being cast on the licensee to ascertain whether such possession is legal or illegal; however, supply would obviously be without prejudice to the owner's right to have an order of eviction against the occupier in a duty constituted proceeding.

22. In the present case, the petitioner has claimed to be an occupier of the premises in question and has sought to substantiate his occupation by annexing telephone bill and voter's identity card.

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24. In view of the foregoing discussion, this Court holds that the petitioner is entitled to supply of electricity. CESC Ltd. is directed to take effective steps for supplying electricity to the petitioner as early as possible but positively within two weeks from date of compliance

of all formalities by him. In the event, any resistance is offered by the private respondent, it shall be open to CESC Ltd. to seek the assistance of the Officer-in-Charge of the local Police Station who shall be bound to provide assistance to secure compliance of this order.”

20. *The said issue was also addressed in the matter of **Fashion Proprietor Aswani Kumar Maity Vs. West Bengal Electricity Distribution Co. Ltd. And Ors. reported as AIR 2009 Cal. 87.** The relevant extract of the said judgment is reproduced hereinbelow:-*

2. The legal question that arises is as to whether the petitioner is entitled to supply of electricity at the premises despite the dispute and despite it being unclear as to whether the petitioner is in lawful occupation of the premises. A fair concession has, however, been made by the private respondent in suggesting that the writ petitioner is not a rank trespasser in the sense that he entered into possession with the authority of the landlord but has now overstayed the welcome and does not have any authority to remain in possession.

3. The petitioner refers to the change in the law, of the departure from the concept of “lawful occupation” in the Electricity Act of 1910 to the concept of occupier simpliciter in the Electricity Act of 2003. The petitioner suggests that the earlier judgments would have no application upon the change in law and it is a conscious decision of the legislature to drop the word “lawful” from the comparable provision.

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13. Section 43 of the Act makes it incumbent on a licensee to supply electricity to an owner or occupier of any premises. It is, probably, inappropriate to compare Section 43 of the present Act with Section 12 (6) of the previous Act. The definition of “occupier” in Section 12 (6) of the previous Act was restricted to Section 12 of the said Act. Section 12 of the previous Act operated in a different field and is not comparable with Section 43 of the present Act. Sub-section (6) was introduced into the 1910 Act by an amendment of 1959.

“12 (6) In this section, “occupier” of any building or land means a person in lawful occupation of that building or land.”

14. If the law of the land provides that a person in possession of any premises may not be dispossessed therefrom except in accordance with law, it is implicit that the possession of the person is protected till such time that an appropriate forum holds otherwise and the person is removed from the premises under due process of law. It would then defy reason to suggest that such person can continue to be in possession but be denied an essential utility as electricity which is within the broad sweep of the right to life guaranteed under Article 21 of the Constitution.

15. The writ petition succeeds. The licensee will provide a new electricity connection to the writ petitioner upon the writ petitioner complying with all requisite formalities including paying the relevant charges. The connection will be made

available within two weeks from the date of completion of all formalities by the petitioner.”

21. *The issue was also examined by the Hon'ble Calcutta High Court in the matter of **Molay Kumar Acharya Vs Chairman-cum-Managing Director, W.B. State Electricity Distribution Co. and ors. reported as 2008 AIR (Calcutta) 47.** The relevant extract of the aforesaid judgment is reproduced hereinbelow:-*

12. Under Section 43 of the Electricity Act 2003, the "Licensee" defined under Section 2(39) of the Act, has the duty to supply electricity on an Application made either by the "owner" or the "Occupier" of the premises within one month from the date of receipt of such Application.

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14. In retaliation to the aforementioned point argued, Mr. Bidyut Banerjee, learned counsel appearing for the Respondents has submitted that so far as the word "Occupier" is concerned, the same has not been defined under the Electricity Act 2003 but under the Strouds Judicial Dictionary, the word "Occupier" means "the tenant, though absent, is generally speaking the "Occupier" of premises". According to him, the petitioner being not a tenant, cannot therefore be said to be an Occupier. He further submits that the Division Bench judgment cited by Sardar Amjad Ali reported in 2005 (4) CHN 169, cannot apply because the said judgment does not deal with the definition of the word "Occupier" and therefore, it can have no application, in the facts and circumstances of this case.

Mr. Bidyut Banerjee, on the contrary has referred to two judgments of another Hon'ble Single Judge of this Court, one of which has been passed in the case of

Samsul Haque Mollick v. CESC Ltd., reported in AIR 2006 Calcutta 73 wherein his Lordship has held that an unlawful occupant of a part of premises is not entitled to get Electricity.

This Court is unable to agree with the submissions of the learned counsel appearing for the Respondents for the reasons stated hereinafter.

In Black's Law Dictionary, the word "Occupier" has been defined as an occupant and an "Occupant", in the same dictionary, has been defined to be a person in possession. The word "Occupier" and "Occupant" as defined in the Blacks Law Dictionary are therefore more relevant to be taken note of, in the facts and circumstances of this case where the newly added Respondent No.6 has herself gone on record by making the following statement in para 3(e) of her Affidavit-in-opposition which reads as follows :-

"3(e) that after mutation of my name in respect of the premises in question I brought a Title suit being No. 69 of 2007 in the court of learned 2nd Court, Civil Judge (Junior Division) Barasat against the Opposite Party/writ petitioner inter alia for eviction and permanent injunction along with an application under Order 39 Rule 1 and 2 of the Civil Procedure Code for injunction and restraining the petitioner from changing nature and character of the suit property. In the said plaint and in the injunction application under Order 39 Rule 1 and 2 it was stated that petitioner is a licensee under me and I requested the petitioner to quit and vacate the said property but petitioner instead of vacating the said property trying to cause addition/alteration in the suit property and hence the suit and prayed for injunction as aforesaid."

15. In the context of what the Respondent No. 6 has stated in the aforementioned paragraph, the definition given in Blacks Law Dictionary defining the words "Occupier" and "Occupant" become more relevant. They read as follows :-

"Occupier - An occupant; one who is in the enjoyment of a thing.

Occupant - Person in possession, Person having possession rights, who can control what goes on premises. One who has actual use, possession or control of a thing. Redevelopment Authority of Allegheny County v. Stepanik, 26 Pa Cmwith 180, 360 A. 2d 300, 302. One who takes the first possession of a thing of which there is no owner. One who occupies and takes possession. Person who acquires title by occupancy.

Common occupant-See General occupant, below.

General occupant-At common law where a man was tenant pur autre vie, or had an estate granted to himself only (without mentioning his heirs) for the life of another man, and died without alienation during the life of cestui que vie, or him by whose life it was holden, he that could first enter on the land might lawfully retain the possession, so long as cestui que vie lived, by right of occupancy, and was hence termed a "general" or common "Occupant".

Special occupant-A person having a special right to enter upon and occupy lands granted pur autre vie, on the death of the tenant, and during the life of cestui que vie."

16. So far as Strouds Judicial Dictionary is concerned, the definition of the word "Occupier" has also given an illustration vide Entry No. 21, the photocopy whereof

was submitted by Mr. Bidyut Banerjee himself and which reads as follows :-

"(21) "Person in actual occupation." Section 71, "Occupier", Section 124, Poor Relief (Ireland) Act, 1838) (1 and 2 Vict. c. 56), see Middleton v. M'Donnell, (1896) 2 IR 228; Immediate Use of Enjoyment."

17. Thus, the illustration given in Strouds Judicial Dictionary is similar to the definition of the word "Occupier" given in the Blacks Law Dictionary.

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25. For the foregoing reasons, the petitioner has the right to claim Electricity as an Occupier under Section 43 of the Electricity Act 2003. Consequently this Court however, makes it very clear that whatever observations have been made in this judgment are only to be construed and interpreted in the context of the petitioner's right to have electricity so long as he remains in possession of the property in question because no one, in the modern days can survive without Electricity, and therefore, the right to Electricity is also a right to life and liberty in terms of Article 21 of the Constitution of India. This Court therefore makes it once again very clear that the grant of electrical connection to the writ petitioner in view of the Order passed by this Court will not mean to be any adjudication in respect of any of the proceedings or the suit/suits which may be pending inter se between the parties and this Court also makes it clear that the observations made herein in this judgment for the grant of Electricity to the petitioner will not in any way be deemed to affect the rights and contentions of the parties to the proceedings which are pending between them."

22. *Furthermore, the Hon'ble High Court of Gujarat has held in the matter of Yogesh Lakhmanbhai Chovatiya Vs. PGVCL Through the Deputy Engineer, passed in R/Special Civil Application No.6281 of 2021, decided on 02.08.2022 as under:-*

“9. Thus, the petitioners, who are the occupiers of the land, cannot be denied the electricity connection only because dispute with regard to decision of the land in question is pending. The Division Bench has observed that the company cannot decide the disputed question of right and title and the ownership or right of occupancy has no nexus with grant of electrical connection to a consumer.

10. Under the circumstances, the respondent Company is directed to supply electricity connection to the petitioners in the premises or in the property, where they are presently staying and occupying the same.”

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24. *A perusal of the bare provision as contained in the Act as well as the precedent shows that the statute only talks of a person to be the “owner of the property” or 'an occupier of the premises' in question. The insertion of the word “lawful” is an offshoot of a phrase used by the respondent – PSPCL in the A and A form. Even though it would amount to a violence with the statute on the part of the respondent – PSPCL in incorporating the term not contained in the Statute itself and insisting upon a word to be part of statute which stands deleted, yet, the issue is being examined since the possession of the petitioner as a licensee is not a subject matter of dispute.*

25. *“Lawful” is again a term that has not been defined under the Electricity Act, 2003 or the regulations framed thereunder or by any other sale circular issued by the PSPCL. Consequently, 'lawful' has to be seen in the context of the meaning ordinarily understood or assigned in the ordinary understanding of the general Public.*

26. *In Black's Law Dictionary, 10th Edition, “lawful” means not contrary to law; permitted or recognized by law.*

27. *A licensee is recognised in a 'lawful possession' of the premises under Section 52 of the Indian Easements Act, 1882. The possession of a licensee is thus, 'lawful' under the statutory regime and such principles would always be attracted for understanding the inter se rights of the parties even though the Transfer of Property Act, 1882 may not be applicable to the territories of Punjab. The dispute regarding a valid revocation is yet to be adjudicated upon by the civil Court.*

28. *The word “occupier” even otherwise is assumed in law to be an occupation which otherwise has some legal foundation. Law or Courts of law do not promote degeneration of rule of law and would not be seen promoting capitalization in favour of a wrong doer. The term “Occupier” used in the Electricity Act, 2003, does not intend to create a right in favour of a rank trespasser. The legislature would not intend to promote breach of law. Besides, every term used in a statute inherently implies it to be lawful. Hence, the interpretation of “occupier” would necessarily mean a possession where a person has been lawfully inducted in a premises. The continuity of subsequent possession by statutory protection or pending judicial adjudication would not be sufficient to hold the possession to be unlawful, under the Electricity Act, 2003 so as to deny release of electricity connection in favour of such occupier, provided though that the application otherwise satisfies to the prescribed regulations. Any stricter approach would confer*

upon the landlord/owner, an unbridled power to deprive an occupant of the basic amenities that are now integral part of Article 21 of the Constitution of India, 1950. The interpretation assigned to a statutory provision should be done to promote the object of the Act instead of leaving much room for mischief by a disgruntled landlord/owner. The respondent No.3 has conceded that the petitioner is in possession, albeit as a licensee. The licence is claimed to have been revoked. The petitioner however, claims to be in possession in part performance of the agreement and thus, is entitled to retain possession. The said question raises a dispute of title and not a valid vesting of occupancy in favour of the petitioner. Even otherwise, the essentials of a license are:-

- (i) Two different persons*
- (ii) There has to be a grant*
- (iii) License is always useful*
- (iv) License is granted to do something in or upon the grantee's property*
- (v) License does not relate to the ownership but only creates a personal right or obligation.*

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30. *Learned counsel for respondent No.3 also made a reference to the provisions as enshrined in Clause 6.4.3 of the Punjab State Electricity Regulatory Commission (Electricity Supply Code & Related Matters) Regulations, 2014 (as amended), in short 'Supply Code, 2014' to contend as to what would constitute a proof of ownership/occupancy of the premises. Relevant extract thereof reads as under:-*

“(b) Proof of Ownership/Occupancy of Premises:

The applicant shall submit proof of ownership/occupation of the premises for which the connection is applied. Any of the following documents shall be

acceptable as proof of ownership or occupancy of premises:-

(i) Copy of sale deed or lease deed or rent deed and in the case of agricultural connections a copy of khasra / girdawari / jamabandi / fard of the land;

(ii) Certificate from panchayat showing ownership of premises within phirni/lal lakir of village for DS/NRS connection;

(iii) Registered General Power of Attorney;

(iv) Municipal tax receipt or demand notice or any other related document;

(v) Letter of allotment with possession letter. Provided that where an applicant, who is lawful occupier of the premises, is a tenant or a leaseholder and is unable to produce the consent of the owner/land lord for obtaining a connection, a separate Indemnity Bond shall be executed in favour of the distribution licensee in the prescribed form.

(c) Submission of NOCs

For release of new connection/additional load/demand an applicant shall submit No Objection Certificate (NOC) from the competent authority in case it is required as per any State/Central government law/notified policy or regulations framed under the Electricity Act, 2003 or specific order of any court issued from time to time restraining release of connections in any particular area/premises. The distribution licensee shall circulate the list of cases where NoC is required, as per applicable law/policy, with the approval of the Commission.”

31. The aforesaid proofs described in the Supply Code, 2014 are only illustrative and are not exhaustive. It is not upto the Department to contend that in the absence of any

of those illustrative documents, it shall not consider any other event or document of possession as a valid proof of possession.”

In so far as the objection as regards the availability of alternative efficacious remedy is concerned, said objection is well founded. However, taking into consideration the fact that the matter has remained pending before this Court since 2019 for final adjudication, it may not be an act of balancing equity at this stage to direct the petitioner to re-agitate his entire grievance before the Consumer Grievances Redressal Forum at this stage. The objection being sustained at this belated stage is likely to compound the difficulties. Even otherwise, the facts in the present case not being disputed, directing the petitioner to approach the Consumer Grievances Redressal Forum at this stage is mere a travesty of justice. Ordinarily, a person ought to take recourse to the statutory remedies prescribed and High Court is not a Court of first instance. The matter had remained pending for ruling the *inter se* rights of “owner” and “occupier” under the Electricity Act, 2003. The said view having now been taken, the *lis* is being examined on merits. The second aspect that has weighed is that an instrumentality of State is struggling to get an electricity connection, hence, despite the alternative remedy, the matter has been dealt under the writ jurisdiction considering the above exceptional circumstances.

Taking into consideration the fact that the current position in law has previously been settled by a precedent set by this Court, learned counsel for the parties are *ad idem* that in event of the petitioner approaching the Assistant Executive Engineer/RespondentNo.2 –

PSPCL, Fazilka, within a period of 04 weeks from today, appropriate steps in accordance with law shall be taken in a time bound manner subject to the petitioner complying with the requirements prescribed under the regulations framed and the connection thereafter shall be released within a period of 04 weeks thereafter.

The present petition is disposed of in above terms.

November 16, 2022
raj arora

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No