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15.05.2023
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 2824 of 2018

Santi Ranjan Halder
Vs.
West Bengal State Electricity
Distribution Company Limited & Ors.

Mr. Ashis Kumar Dutta
...for the petitioner

Mr. Saurav Chaudhuri
...for the WBSEDCL

Ms. Piyali Sengupta,
Ms. Rupsha Chakraborty
...for the State

Mr. Lakshminath Bhattacharyya
...for the private respondents

A report filed on behalf of the District Magistrate, South 24-Parganas today be kept on record.

It is evident from the said report that, subsequent to the previous order of this Court, a notice of hearing was given and the parties were heard on April 27, 2023. On the said date, an inspection was directed to be held in the presence of the parties and a report was to be submitted on May 04, 2023.

Vide order dated May 04, 2023, the District Magistrate, South 24-Parganas, ultimately held that the erection of a PCC pole in the common passage and another on the land of the petitioner would not tantamount to violation of the subsisting *status quo* order passed in a civil suit pending between the parties. Accordingly, the District Magistrate directed the electricity connection to be given to the petitioner, with police help if necessary.

Learned counsel appearing for the West Bengal State Electricity Distribution Company Limited (WBSEDCL) submits that such connection has, in the meantime, been effected in favour of the petitioner.

Learned counsel appearing for the private respondents contends that no further notice of hearing on May 04, 2023 was given to the private respondents from the end of the District Magistrate.

That apart, it is argued that the installation of a PCC pole for the electricity line being given to the petitioner amounts to violation of the *status quo* order subsisting in the civil suit between the parties.

It is further submitted that in a previous order, the District Magistrate had observed that due compensation is required to be paid to the private respondents, which has not been complied

with and/or found place in the last order of the District Magistrate dated May 04, 2023.

An information slip is handed over by learned counsel for the private respondents to support his contention as regards the subsistence of a *status quo* order.

Heard learned counsel for the parties.

At the outset, it may be noted that the District Magistrate has duly complied with the direction of this Court by giving notice of hearing to the parties and concluding the hearing as well as passing a final order on the same.

Insofar as the information slip handed over by the private respondents is concerned, the same records that the plaintiff and the principal defendants in Title Suit No. 337 of 2018 are directed to maintain *status quo* in respect of nature and character of the suit property.

However, the installation of a PCC pole, for all practical purposes, is merely to facilitate the supply of electricity connection to an occupant. The installation of such pole by the Distribution Licensee cannot amount to a violation of the *status quo* order, which is subsisting between the parties, restraining the parties from changing the nature and character of the suit property in any manner.

Inasmuch as the nature and character of the suit property is concerned, the erection of a PCC pole for the limited purpose of giving electricity connection by the Licensee is not, in any manner, a change or alteration in the nature and character of the property by any of the parties.

Insofar as prior notice is concerned, admittedly, the hearing on April 27, 2023 was conducted upon giving prior notice to the parties. In fact, the present objector/respondent no. 7, Swajal Halder, was present with his advocate along with respondent no. 6, Prasanta Halder at the said hearing.

Only upon hearing the parties and recording the objection of the respondents, including that regarding erection of a PCC pole, the District Magistrate proceeded to direct an inspection to be held.

The said inspection was also held, admittedly, in the presence of both sides, which is also evident from the signatures of the private respondents in minutes accompanying the inspection report.

Only upon such inspection and consideration of the arguments of the parties, the Magistrate accepted the said report and passed the final order on May 04, 2023 on the premise of such report and in full awareness of the arguments made by the

parties, thereby directing electricity connection to be given to the petitioner.

It was rightly observed by the District Magistrate that electricity is one of the fundamental rights for existence and, subject to compliance of other requirements, the petitioner is entitled to get a right of electricity. It was also observed, correctly, by the District Magistrate that the right to electricity would not be construed as recognizing any tenancy or other possessory right with regard to the subject property.

It is recorded even in the order dated April 27, 2023 that the private respondents present in the hearing stated that they had no objection against the drawal of electric line through common passage, but were opposed only to erection of the PCC pole, which has been discussed above.

In such view of the matter, there could not have been any further hindrance in the electricity connection being given to the petitioner.

Insofar as the question of compensation is concerned, the order sought to be relied on by the private respondents was an ad interim order and the findings regarding compensation was, at best, tentative, which merged in the final order dated May 04, 2023. In any event, the private

respondents have not made any application for compensation at any point of time.

Hence, the consideration of compensation payable to the private respondents is beyond the scope of the present enquiry.

That apart, it is an admitted position that the property is a joint property and there was a mutual settlement between the parties, pursuant to which they are enjoying their respective portions of the same. The existence of the passage is also not disputed by the parties.

Insofar as the other objections are concerned, those have been dealt with correctly by the District Magistrate, as indicated above. Thus, there was no occasion for the Distribution Licensee to pay any separate compensation to the petitioner, more so, since the passage is common between the petitioner and the private respondents and the private respondents cannot claim any special right over the same. Although the private respondents have sought to argue that they have exclusive rights over the passage, the same, in any event, is the subject matter of dispute before the civil court where a partition suit is pending at the behest of the private respondents.

In such view of the matter, W.P.A. No. 2824 of 2018 is disposed of by directing the WBSEDCL to

continue supplying electricity to the petitioner over the newly installed electricity connection already given at the disputed property, subject to payment of regular electricity charges and compliance of other laws by the petitioner.

However, as correctly observed by the District Magistrate, it is reiterated that the electricity connection shall not, *per se*, operate to create any special right or equity in favour of the petitioner and/or prejudice the rights of the petitioner and the private respondents in the pending civil suit between the said parties.

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 of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)