

AD-11
Ct No.09
17.03.2023
TN

WPA No. 5537 of 2023

Ismail Sekh
Vs.
Calcutta Electric Supply Corporation Limited
and others

Mr. Wasim Reza
.... for the petitioner

Ms. Aparajita Rao,
Ms. Ankana Basu
.... for the CESC Limited

Mr. Swapan Kr. Pal
.... for the State

Mr. Haradhan Banerjee,
Mr. Amitava Pain,
Mr. Partha Pratim Mukhopadhyaya,
Mr. Nilmoni Das
.... for the private respondent

Learned counsel for the petitioner submits that the petitioner is running a shop at the premises-in-question and was granted a trade licence, which has been annexed to the present writ petition.

Learned counsel further submits that although a suit is pending between the parties, there is no restraint order preventing the petitioner from taking any electricity connection.

The learned Senior Advocate appearing for the private respondent places reliance on the plaint of one Title Suit No. 214 of 2023 pending before the Second

Court of Civil Judge (Junior Division) at Howrah and photocopy of a certified copy of an order dated February 14, 2023 whereby the present petitioner and another were restrained by an order of injunction from creating any disturbance or interference in the peaceful possession of the plaintiff in respect of the suit premises as mentioned in the schedules of the plaint without due course of law.

Learned counsel appearing for the CESC Limited submits that the scope of decision-making of the CESC is limited inasmuch as since the petitioner has *prima facie* provided documents of possession, subject to compliance of all formalities by the petitioner, the CESC Limited is required to give the electricity connection-in-question.

A perusal of the plaint of the suit handed over on behalf of the private respondent clearly indicates that the suit property is comprised of two rooms bearing nos. 1 and 3 as mentioned in the schedules of the plaint, both of which are situated at holding no. 379, G.T. Road, P.S. Shibpur, District: Howrah.

Although the present writ petitioner is seeking electricity connection at the same premises, the house-in-question is apparently a building containing several rooms. It is undoubtedly disputed at this juncture as to who is in possession of room nos.1 and

3 of the property. The *prima facie* order of injunction passed by the civil court was passed *ex parte*. As such, there is no present adjudication as yet finally as to who is in occupation of the said two rooms.

However, even if it is *prima facie* presumed that the private respondent is in possession of room nos.1 and 3, there is nothing on record to fix the claimed occupation of the petitioner in those specific rooms of the building.

That apart, mere giving of an electricity connection does not create any special right or equity in favour of the consumer.

In any event, it will be open to both the petitioner and the private respondent to agitate their grievances regarding right, title and interest in the property, which are the subject-matter of the pending suit, before the competent civil court. However, the pendency of the suit and the subsistence of the injunction order, without ascertainment of the fact as to whether the petitioner is seeking to obtain possession in respect of the specific rooms with regard to which injunction has been granted does not preclude the petitioner's right under Section 43 of the Electricity Act, 2003 to get an independent electricity supply.

Since the petitioner has produced *prima facie* proof of his occupation at the building, being Premises no.379, G.T. Road, by way of production of a trade licence, there cannot be any impediment for the CESC Limited to give such connection to the petitioner.

Accordingly, WPA No. 5537 of 2023 is disposed of by directing the CESC Limited to give the electricity connection to the petitioner at the premises-in-question upon compliance of all formalities by the petitioner, positively by two weeks from the date of such compliance by the petitioner.

In the event any obstruction is offered by the private respondent and/or his men and agents in the petitioner getting such connection, the CESC personnel will be at liberty to approach the respondent no.3, the Officer-in-Charge, Shibpur Police Station for adequate police assistance. If so approached, the respondent no.3 shall act on a server copy of this order and grant such assistance to the CESC personnel at the cost of the petitioner. For the purpose of giving electricity connection, the police personnel will be at liberty to remove any hindrance if put up by any person to the access of the CESC personnel to reach the meter board location.

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 with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)