

In the High Court at Calcutta
Constitutional Writ Jurisdiction

Appellate Side

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.A. No.6496 of 2023

Rohit Cargo Movers
Vs.
CESC Limited and others

For the petitioner : Mr. Subhasish Pachhal,
Mr. Sandip Chakraborty,
Mr. Rahul Kinkar Pandey

For the CESC Limited : Mr. Debjit Mukherjee

For the respondent No.5 : Mr. Sakya Sen,
Mr. Priyankar Saha,
Mr. Lalratan Mondal

Hearing concluded on : 27.04.2023

Judgment on : 02.05.2023

Sabyasachi Bhattacharyya, J:-

1. *Vide* order dated April 26, 2023, a prayer of the private respondent for holding an inspection through a Special Officer was refused.
2. The context of the prayer can be found in the crux of the dispute between the parties. The petitioner, claiming to be in settled possession of the disputed property, sought an electricity connection in its name. The licensee/CESC Limited does not have any objection to give the same, subject to compliance of all formalities by the petitioner. However, the private respondent no.5 objects on the

ground that the said respondent is in exclusive possession of the property and, by way of taking an electricity connection, the petitioner is seeking to encroach upon the property.

3. It is contended by learned counsel for the private respondent no.5 that the petitioner has failed to show settled possession, which is the *sine qua non* for getting an electricity connection even within the contemplation of Section 43 of the Electricity Act, 2003 (for the sake of brevity, “the 2003 Act”).
4. Learned counsel places reliance on a three-Judge Bench decision of this Court in *Abhimanyu Mazumdar Vs. The Superintending Engineer and another*, reported at AIR 2011 Cal 64. The Full Bench, *inter alia*, held that in order to get an electricity connection, a trespasser must be in actual physical possession of the property over a sufficiently long period, which must be to the knowledge (either express or implied) of the owner or without any attempt at concealment by the trespasser and which contains an element of *animus possidendi*. The nature of possession of the trespasser would, however, be a matter to be decided on the facts and circumstances of each case. The process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced to by the true owner.
5. Learned counsel then contends that Section 43 of the 2003 Act does not create a right *per se* but imposes duty on the licensee to supply electricity on request. An essential component of supply, it is argued, is the laying of the lines for giving such connection. In such context, it is argued that the Works of Licensees Rules, 2006 (for short, “the

2006 Rules”) acquire relevance. The expression “lawful occupation” used in the said Rules was interpreted in the context of Section 43 of the 2003 Act by the Full Bench of this Court in *Abhimanyu Mazumdar (supra)*. It is submitted that the documents produced by the petitioner do not establish the petitioner’s settled possession in respect of the property. The trade licence submitted by the petitioner and annexed to the writ petition, it is argued, does not indicate any fees having been paid by the petitioner for running its transport business, which is allegedly the business of the petitioner.

6. On the contrary, it is the private respondent no.5 who is running a transport business at the property.
7. It is next argued that the Telephone Bill annexed to the writ petition is not sacrosanct to prove the settled possession of the petitioner, since the very existence of a telephone at the property is disputed which, it is argued, can only be established by visual inspection.
8. It is reiterated that the court is not powerless to issue a visual inspection to ascertain the actual physical possession of the property.
9. Learned counsel for the private respondent no.5 next places reliance on the affidavit-in-opposition of the said respondent and its annexures. A Commissioner’s report filed in connection with a suit filed by the private respondent no.5 against the Kolkata Port Trust (KoPT) indicates that there are R.T. Shed Rooms on the property, which belong to the petitioner. Moreover, the private respondent no.5 is enjoying a status quo order with regard to the property against the KoPT on the strength of the said respondent’s possession. Even in a

proceeding under Section 144 of the Criminal Procedure Code, a report filed by the police indicates that the private respondent no.5 is in occupation of the property.

10. Hence, it is argued, in the absence of any proof as to the settled possession of the petitioner, the connection cannot be given by the licensee.
11. Learned counsel appearing for the petitioner controverts such contention and argues that there are several documents annexed to the affidavit-in-reply, including documents to show transactions from the disputed property by the petitioner, which clearly prove that the petitioner is in occupation of the same.
12. It is argued that, to establish the right of the petitioner to get an electricity connection at the property, it is only required that the petitioner has to show *prima facie* possession with regard to the property, which has been sufficiently established by the documents-on-record. It is argued that the petitioner has produced several documents to establish possession over a period of time, which cannot be negated at the stage of giving electricity connection to the petitioner.
13. Upon hearing learned counsel for the parties, it is seen that the petitioner has annexed a Certificate of Enlistment at page 12 to the writ petition, which pertains to the year 2022-2023, which is valid up to March 31, 2023. Under Serial No. 2 thereof, it is indicated that the petitioner has paid fees for "Specific Services" to the tune of Rs.2,500/- and under Serial No.1, fees for Certificate for Enlistment of

Rs.500/- has also been deposited. The petitioner argues that no payment has been shown under any of the other heads contained therein, which goes on to indicate that a consolidated fee of Rs.3050/- was taken for the issuance of the Certificate of Enlistment.

14. Hence, it is arguable as to whether the said trade licence can be disproved merely on the ground of that no separate payment under the head of storing in warehouse, transport, etc., was deposited. Moreover, the Certificate of Enlistment is sufficient *prima facie* proof of possession of the petitioner for carrying on trade in the nature of transport business at Jagat Banerjee Ghat Road, where the disputed property is situated.
15. Insofar as the telephone bill dated November 5, 2022 is concerned, the same also indicates that the petitioner is in possession of the premises. It is doubtful as to whether, while hearing the present writ petition arising out of an electricity matter, the court can enter into the detailed exercise of collecting evidence by directing visual inspection to see whether a telephone is physically located in the said premises or not. A visual inspection to ascertain physical possession would amount to a roving enquiry, particularly within the limited fact-finding scope of a writ petition. Even the distribution licensee, while giving a new connection, is not required to hold an inspection to ascertain whether there is actually a telephone installed at the premises. The telephone bill sufficiently indicates that at least there is a telephone connection at the premises, which is sufficient for the present purpose.

16. In the affidavit-in-reply, the petitioner has annexed a further receipt of payment of telephone bill dated March 14, 2023, which is of comparatively recent origin.
17. Several road challans, invoices, etc., have also been annexed to indicate *prima facie* that the petitioner is in possession of the property. In fact, elaborate bank statements and GST return receipts have also been annexed, which indicate that the petitioner is operating from the disputed premises. Such elaborate materials cannot be brushed aside without a full-fledged and detailed enquiry by taking evidence, which is not the standard of proof expected to be applied by the licensee in order to give a new electricity connection to an applicant.
18. In the present matter, the CESC Limited could not even hold any inspection to ascertain feasibility of giving a connection to the petitioner. As such, the licensee is obliged by Section 43 of the 2003 Act to supply electricity to the petitioner at the premises, in view of sufficient *prima facie* material having been produced to show the possession of the petitioner.
19. A consideration of the Full Bench Judgment of this Court in *Abhimanyu Mazumdar (supra)* shows that the said judgment involved a question as to whether a person who is an encroacher upon the land belonging to another without any right of permission conferred by such owner can be treated to an occupier. In such context, the definition of “occupier” in the 2006 Rules was also read in conjunction with Section 43 of the 2003 Act. The Full Bench, in its wisdom, had placed reliance on several judgments of the Supreme Court. One of

the tests in case of a trespasser was that he must be in actual physical possession of the property over a sufficiently long period, which has to be to the knowledge (either expressed or implied) of the owner or without any attempt at concealment by the trespasser and which contains an element of *animus possidendi*. In case of a trespasser, it was further observed that the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced to by the true owner.

20. The said yardsticks were borrowed by the Full Bench while considering the concept of settled possession in the context of the right to dispossess a trespasser. It was observed that the trespasser's possession must be settled, extending over sufficiently long period of time, and cannot be a casual act of possession.
21. In the present case, in view of the plethora of documents produced by the petitioner, there is no doubt that 'settled possession' has been established by the petitioner. There is nothing on record to indicate that the respondent no.5 has ever litigated for eviction of the petitioners from the property-in-dispute. The entire litigation at the behest of the respondent no.5 was against the KoPT. The petitioner is not a party either in the civil suit or proceeding under Section 144 of the Criminal Procedure Code. In any event, a police report filed in such criminal proceeding cannot be sufficient proof of the petitioner's dispossession, once the petitioner has shown *prima facie* settled possession.

- 22.** It is fully probable that the petitioner is in settled possession of at least a portion of the property, despite the private respondent no.5 having obtained orders against the KoPT, a third party to the present writ petition, with regard to the property. In the absence of impleadment of the petitioner as a party to the suit, none of the orders and/or reports or other documents filed therein can be binding on the petitioner, the entire exercise having been undertaken behind the back of the petitioner.
- 23.** In the supplementary affidavit, the private respondent no.5 has annexed documents with regard to the same address, showing a plastic bottle manufacturing business being run from the premises. The challans annexed to the supplementary affidavit corroborate such stand.
- 24.** However, the Certificate of Enlistment issued to the petitioner is clearly in respect of a transport business, which is also reflected from the name of the petitioner-Company. The dispute as to possession is undoubtedly arguable, but is a civil dispute in nature and cannot be conclusively adjudicated either by the writ court or by the licensee, for the limited purpose of giving electricity connection. Section 43 of the 2003 Act casts a duty on the licensee to give electricity supply to the applicant upon an application being made. However, a duty cast on the licensee is nothing but the other side of the coin which creates a right in favour of the applicant to get such connection.
- 25.** There is another perspective which is required to be explored in the context of the Full Bench judgment of this Court. In the said

judgment, the provisions of Rule 3 of the 2003 Rules were considered. In the said Rule, the expression “occupier” has been used for the purpose of fixing liability of the licensee to take prior consent. In the event a dispute is raised by the occupier, permission in writing is required to be obtained from the District Magistrate or the Commissioner of Police.

- 26.** The definition of “occupier”, *unless the context otherwise requires*, is the occupier of any building or land, being a person in ‘lawful occupation’ of that building or land.
- 27.** Seen in proper context, the 2006 Rules, insofar as the expression ‘occupation’ is concerned, deal with the stage when the lines are required to be laid or drawn by the licensee for the purpose of supplying electricity to the petitioner.
- 28.** Although such comparison found place in the Full Bench judgment in the context of whether the applicant is to be in settled possession of the property, the use of the expression “occupier” in the 2006 Rules is specifically in the context when electricity line is drawn or laid over or through the property of such ‘occupier’. On the other hand, the ‘occupier’ envisaged in Section 43 of the 2003 Act does not speak about the person who holds the premises over which such connection is being given to someone else but the person who applies for the electricity connection himself to his property. Section 43(1) stipulates that on an application by the owner or occupier of any premises, the licensee shall give supply of electricity to such premises within one month after receipt of the application. The proviso thereto

contemplates that if the supply requires extension of distribution mains, etc., the distribution licensee shall supply electricity immediately after such extension or commissioning of sub-station. Sub-section (2) speaks about the licensee providing electric plant or electric line for giving such supply, in default of which sub-section (3) is attracted, under which the failure of the licensee to supply electricity within the period of one month is visited by liability to pay penalty extending up to Rs. 1,000/- for each day of default.

- 29.** Such obligation on the part of the licensee to lay the line, extending the line, commissioning a sub-station, provide an electric plant or electric line, is undoubtedly governed by the 2006 Rules.
- 30.** However, the right to get electricity supply on the part of the applicant is rather divorced from such process, inasmuch as the property to which the line is being given is the concern of the applicant, in respect of which the term 'occupier' has *not* been qualified by the adjective 'lawful'.
- 31.** On the other hand, when the licensee draws the line or extends the mains or installs a sub-station, the same has to be done over the property of a third party, in respect of which the definition of "occupier" as a 'lawful occupant' comes into play.
- 32.** The dispute arisen in the present writ petition is squarely in respect of the applicant's possession on the property where the connection is sought to be given and not the property over which the line is sought to be drawn by the licensee. Hence, a consideration of Section 43

cannot have any element of 'lawfulness' to qualify the occupation of the applicant.

33. As discussed hereinabove, sufficient *prima facie* material has been produced by the petitioner to establish that the petitioner is in settled possession of the property over a period of time.
34. The documents and counter documents produced by the parties in relation to the dispute as to possession can only be the subject-matter of a regular civil suit before the competent court and cannot be decided either within the limited conspectus of the writ petition or by the licensee.
35. In such view of the matter, the petitioner has established settled possession within the contemplation of the Full Bench judgment of *Abhimanyu Mazumdar (supra)*, read in conjunction with Section 43 of the 2003 Act and Article 21 of the Constitution of India. Hence, it cannot be said that the component of lawful occupation over the property through which the supply will be given can be equated with the premises to which such connection is being given, the latter being the sole subject-matter of the present proceeding.
36. Accordingly, WPA No.9496 of 2023 is allowed on contest, thereby directing the CESC Limited to hold an inspection to ascertain the feasibility and appropriate location for giving new electricity connection to the petitioner. Such inspection shall be held within a week from date and, thereafter, a quotation shall be duly raised by the CESC Limited within a week thereafter. Upon compliance of all formalities by the petitioner, the new electricity connection will be

given at the premises to the petitioner within a further week from the date of compliance of such formalities. If, either at the time of holding inspection or at the time of giving such connection from the existing meter-board position, if any, the CESC Limited personnel face any obstruction from the respondent no.5 and/or his men and agents, it will be open to the CESC Personnel to approach respondent no.4, the Inspector-in-Charge of the Shibpur Police Station for adequate police assistance, which will be given by respondent no.4 by acting on a server copy of this order at the cost of the petitioner on both such occasions of inspection and giving connection.

- 37.** It is, however, made clear that such connection, as and when given to the petitioner, shall not create any special right or equity in favour of the petitioner which the petitioner otherwise does not have and also shall not prejudice the rights and contentions of the parties with regard to the civil disputes which have arisen between them.
- 38.** There will be no order as to costs.
- 39.** Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)