

11th April,
2023
(AK)
08

W.P.A 7224 of 2023

Letraco Kid Leather and others
Vs.
The West Bengal State Electricity Distribution Company
Limited and others

Mr. Farhan Ghaffar
...for the petitioners.

Mr. Debjit Mukherjee
...for the WBSEDCL.

Mr. Shashwat Nayak
Mr. Rajdeep Mantha
Mr. Hamiidul Haque
...for the respondent nos.4 to 8.

In the present case, a dispute has primarily arisen as regards whether the petitioners, in order to get a new electricity connection to the premises-in-question, are in settled possession of the premises.

It is contended by learned counsel for the petitioner, by placing reliance on the agreement between the parties, that the same clearly stipulates that a property will be exclusively demarcated for storing the raw materials and installing the machinery of the present petitioner, thereby indicating the petitioners' possession of such exclusive portion of property, where the electricity connection has now been sought.

Learned counsel for the petitioners further places reliance on an application under Section 144 of the Criminal Procedure Code and another under Section 11 of

the Arbitration and Conciliation Act, 1996, both of which were filed by the present private respondents admitting that there was such an agreement between the parties.

Learned counsel appearing for the private respondents also places reliance on the same agreement as cited by the petitioner and seeks to interpret the same in the perspective that the same only confers right on the petitioner to a limited extent, not extending to possession.

In fact, it is argued, the entire job contemplated under the agreement was to be undertaken by the private respondents and not the petitioner.

The petitioner was only entitled under the agreement to depute people for supervising the work being done.

Mere storage of raw materials and installation of machinery by the petitioners could not entitle the petitioners to claim possession for the purpose of getting electricity connection, it is argued.

A perusal of the second paragraph of the application under Section 144 of the Criminal Procedure Code indicates that the present private respondent, the applicant therein, averred that under the agreement dated September 16, 2014, the opposite parties therein (present writ petitioners) were allocated for a period of twenty years and for lawful consideration a parcel of land over which the present private respondents had a lease hold title.

However, it was further stipulated that the allocation was made for the purposes of installation of diverse machineries by the present petitioner for the execution of job works to be carried out on and from the said allocated parcel of land.

However, nothing is disclosed in the said paragraph as regards the present writ petitioner being in possession of the said property or such possession being handed over to the petitioner.

It might have otherwise been argued by writ petitioners that the exclusive installation of machinery by the petitioner and raw material storage could have conferred a possessory right on the petitioner, but for the specific stipulation in the agreement to the effect that it was the present private respondents who were to carry out the job from the said premises.

The agreement, in Clause D thereof, mentioned that the present writ petitioner was looking for a tannery which had the idle capacity to process its hide and skin.

In such context, Clause E stipulates that the private respondent Asma, upon receiving the proposal from the writ petitioner LKL and in order to utilize its idle capacity, agreed to accept the said proposal and was ready to set up a separate processing unit for processing hide and skin belonging to LKL to finish leather provided the fund required for construction of the shed was initially met by LKL, as adjustable advance.

In latter Clauses, including Clause 10, it was provided that in the event, for the purpose of implementation of the job work arrangement, any additional electricity load capacity and/or installation of boilers or other allied services and/or any other statutory license is required to achieve the targeted production, necessary application for providing such additional electricity or other services shall be made in the name of the private respondents, but all costs thereof shall be paid and borne by the present writ petitioner.

Again, in Clause 12 of the agreement it is mentioned that the private respondents shall prepare job work bill every month and send to the writ petitioner at their office address.

Clause 11, on the other hand, stipulates that the private respondents shall supply finished leather to the writ petitioner within the seventh of the next month.

Clause 15 of the agreement indicates that the writ petitioner shall be at liberty only to depute one or more supervisors to look after the production at their own cost and, in addition, may appoint a guard for protection and safeguard of the machineries and raw materials belonging to the writ petitioner.

However, apart from such supervisory claim to the property for the limited purpose of watching of the machineries and raw materials belonging to the present writ petitioner, the entire occupation of the shed, which

was constructed by the private respondents, though initially with the money of the petitioner, would be under the private respondents, who would all along carry out the job work-in-question.

Mere location of machinery and raw materials for the tannery, where the private respondents have been all along working under the contemplation of the agreement, cannot tantamount to possessory rights of the writ petitioner sufficient to entitle the writ petitioner to claim settled possession for the purpose of getting the benefit of Section 43 of the Electricity Act, 2003.

In such view of the matter, the writ petitioner has not made out any case in the present writ petition for proving their occupation even *prima facie*, which would entitle them to an electricity connection at the said premises.

Hence, there is no scope of granting any relief to the petitioner within the scope of the present writ petition.

Accordingly, WPA 7224 of 2023 is dismissed without any order as to costs.

However, it is made clear that the pending issues in any other proceeding between the petitioner and the private respondents, including before the appointed arbitrator, have not been entered into on merits by this court while passing the above order.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)