

19th April,
2023
(AK)
10

W.P.A 8892 of 2023

Keshri Automobiles Pvt. Ltd. and another
Vs.
West Bengal State Electricity Distribution Company
Limited and others

Mr. Ganesh Shrivastava
Mr. Sukanta Das

...for the petitioners.

Mr. Sumit Ray

...for the WBSEDCL.

Ms. Rituparna De Ghose
Mr. Amarta Ghose
Mr. Siddhartha Paul
Mr. Souryadeep Ghosh
Ms. Poulomi Chattopadhyay

...for the respondent nos. 5 & 6.

Learned counsel for the petitioners contends that the petitioners are allegedly tenants in respect of the premises-in-question but have been enjoying electricity connection through a sub-meter from the meter of the landlord.

However, as of date, disputes have cropped up between the petitioners and the private respondents/landlords, for which a suit has been filed by the petitioners claiming the petitioners' tenancy rights and consequential injunction.

In such suit, it is submitted, a temporary injunction order was passed for a limited period,

protecting the possession of the petitioners from being disturbed by the private respondents except in due process of law.

As such, it is argued that the petitioners have an independent right as an occupier to get electricity connection to the premises and seeks such connection, which has been refused by the WBSEDCL.

Learned counsel for the WBSEDCL submits that as per the objection of the WBSEDCL, given in writing on March 15, 2023, there is no physical as well as electrical separation between the existing connection and the defined office premises of the petitioners as shown at the time of inspection.

Moreover, it is alleged by the WBSEDCL, there is no suitable meter position found at that site.

Learned counsel appearing for the WBSEDCL further indicates that there is an apprehension of splitting of load due to the above circumstances.

Learned counsel appearing for the private respondents opposes the prayer for giving a new electricity connection to the petitioners, primarily on the ground that the petitioners are illegal occupiers of the premises.

It is submitted that previously there was a leave and license agreement between the private respondents

and the petitioners, which was ultimately terminated by the private respondents in due course of law.

Thereafter the petitioner had filed a suit, which is now pending. However, it is disputed as to whether the interim injunction granted to the petitioners is still continuing.

That apart, the petitioners are already enjoying electricity at the premises, as also endorsed by the WBSEDCL, which is being given by the private respondents through the latter's meter.

It is also argued by learned counsel for the private respondents that the petitioners have huge arrear dues with regard to occupation charges of the premises which is payable to the private respondents.

In a bid to avoid such liability, the petitioners are seeking an independent electricity connection, to establish an equitable right in favour of the petitioners which is not there in law.

On query of court, learned counsel for the private respondents has handed over a copy of a leave and license agreement dated January 1, 2021.

Although there is dispute regarding its validity still subsisting, in view of efflux of time and subsequent termination by the private respondents, the agreement is an indicator at least as regards the specific portion of the property to which the petitioners were inducted.

To ascertain such exact location, the schedule of the license agreement is to be looked into, which specifies that the portion regarding which possession was handed over to the petitioners are all that commercial space containing an area of 500 square feet super built up approximately, which is a little more or less on the front portion of the ground floor of the building complex situated and lying between Gate Nos.1 and 2 of the Salt Lake Stadium, Salt Lake, Kolkata-700098, along with furniture and wooden partitions.

Hence, it can very well be ascertained from the original agreement, even without going into the currency of the same, as regards what portion was allocated to the petitioners, to which the petitioners' right to enjoy electricity is restricted.

Such right is conferred on the petitioners by nothing less than the statute itself, that is, Section 43 of the Electricity Act, 2003, read in conjunction with Article 21 of the Constitution of India.

Although the legality of the possession of the petitioners has been contested by the private respondents and such dispute is pending before a civil court as well as a reference to arbitration has been sought, as per the submission of learned counsel for the private respondents, the dispute in such pending matters is primarily regarding the legality and validity of the

possession of the petitioners as well as the rent and other dues from the petitioners to the private respondents.

However, it is well-settled that a person in settled possession of a property is entitled to get electricity connection at the said property in his or her own name.

Such right cannot be fettered by whatever dues are claimed by the added respondents from the petitioners, which falls within the domain of the civil court and, if there is any arbitration Clause, the arbitrator.

In such view of the matter, the petitioner is entitled to get an independent electricity connection in their name at their portion of the premises.

Accordingly, WPA 8892 of 2023 is disposed of by directing the WBSEDCL to give a new electricity connection to the petitioners from the existing meter board position at the premises, as defined in the purported leave and license entered into between the petitioners and the private respondents on January 1, 2021, by adhering to the schedule of the same, which is treated to be a part of the records.

Such connection shall be given as expeditiously as possible, preferably within three weeks from the date of compliance of all formalities by the petitioners.

However, it is made clear that such connection, as and when given to the petitioners, shall not create any special right or equity in favour of the petitioners, which

the petitioners otherwise do not have and such connection shall be entirely without prejudice to the rights and contentions of the private respondents as well as the petitioners in the pending suit and arbitration proceeding, if any, as well as other in disputes pending before other legal forums.

In the event any obstruction is offered by the private respondents and/or their men and agents in such connection being given, it will be open to the WBSEDCL personnel to approach the local police station, that is, respondent no.4, the Inspector-in-Charge of the Bidhannagar (South) Police Station, for adequate police assistance.

If so approached, such assistance shall be given by respondent no.4 by acting on a server copy of this order, at the cost of the petitioners.

In the event any padlock or other hindrance is put up by the private respondents and/or their men and agents to giving such connection, it will be open to the police personnel to remove such padlock or hindrance for the limited purpose of giving access to the WBSEDCL personnel to give the electricity connection to the petitioners.

It is relevant to mention here that such new connection, if given to the petitioners, shall not tantamount to splitting of load in view of the dispute

already pending between the petitioners and the private respondents which has also been dragged to courts of law and to arbitration, which itself shows that the relation is sour between the petitioners and the private respondents and there cannot be any pact between them to split up the load factor.

There will be no order as to costs.

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

(Sabyasachi Bhattacharyya, J.)