

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.A. No.9630 of 2022

**Kuntal Mukherjee
Vs.
West Bengal State Electricity Distribution
Company Limited and others**

For the petitioner	:	Mr. Anupam Dasadhikary, Mr. Pradeep Pandey, Mr. Samik Sarkar
For the WBSEDCL	:	Mr. Debanjan Mukherji
For the private respondent no.5	:	Mr. Vikas Baisya
Hearing concluded on	:	20.12.2022
Judgment on	:	04.01.2023

Sabyasachi Bhattacharyya, J:-

1. The petitioner, who also claims to be a director of Sabala Surandhan Udyog Pvt. Ltd. (hereinafter referred to as “the Company”), had been enjoying a domestic electricity service connection at the disputed property, bearing Consumer ID No. 105152257 and BP No. 28550657 from Meter no. BB1009463 on and from January 30, 2021.
2. On April 1, 2021, the West Bengal Electricity Distribution Company Limited (in brief, “WBSEDCL”) issued an intimation to the petitioner that the respondent no. 5-company had raised a grievance that, despite being the absolute owner of the disputed property, its application for electricity

connection was refused, whereas the connection to the petitioner was given without proper inspection even in the teeth of the subsistence of an order of injunction passed by a civil court. Hence, the WBSEDCL asked the petitioner to produce way leave permission and related documents along with copies of deed, records and a land demarcation certificate duly authenticated by the BL & LRO within seven days from the receipt of the letter.

3. The petitioner gave a reply to the WBSEDCL on April 5, 2021, along with copies of the relevant registered Power of Attorney, registered lease deed, memorandum of association of the company, etc.
4. However, the WBSEDCL severed the petitioner's electricity supply on May 3, 2021 and gave a notice disclosing the ground of disconnection to be lack of response of the petitioner within a time limit.
5. Such disconnection has been challenged in the present writ petition.
6. The petitioner claims possession as a director of the Company, to which the disputed property was allegedly let out by the respondent no. 5 by way of a registered Deed of Lease dated March 6, 2017 for a period of 26 years. The lease deed was executed by one Partha De on behalf of the respondent no. 5-company allegedly in terms of a registered Power of Attorney dated June 18, 2014. Both the said documents were allegedly handed over to the WBSEDCL by the writ petitioner at the time of taking the connection and in reply to the letter dated April 1, 2021 of the WBSEDCL.
7. The respondent no. 5-company, in its letter of complaint dated April 1, 2021, alleged that the petitioner's electricity connection was given

unlawfully, without inspecting ownership of the property and in violation of an injunction order.

8. The Civil Judge (Junior Division), Second Court at Alipore, by the said ad interim injunction order dated February 15, 2019 passed in Title Suit No. 196 of 2019, had restrained the defendants, including the Company and the alleged constituted attorney of respondent no. 5, namely, Partha De, from “disturbing the peaceful possession of the plaintiff as on that date”. The civil court passed the order on the premise of deeds of conveyance by one Jaya Dey, the mother of the said Partha De (who was also a confirming party thereto) in favour of the plaintiff/respondent no. 5-company, as well as copies of Dakhila, LR RoR, etc. of the suit property.
9. The subsequent lease deed in favour of the Company has been disputed by the respondent no. 5.
10. Upon hearing learned counsel, some salient features of the matter stand out.
11. First, the injunction order dated February 15, 2019, on which the respondents rely, was passed *ex parte* and was ad interim in nature. The finding of possession of the plaintiff (present respondent no. 5) was tentative and *prima facie* and the defendants had no opportunity at that juncture to produce documents or present their version.
12. Although the binding effect of the said order against the parties thereto cannot be disputed, the civil court had no scope of considering the registered lease deed executed on behalf of the respondent no. 5-company by Partha De (holding a registered Power of Attorney) on behalf of respondent no. 5 in favour of the Company subsequent to the execution of

the title deeds in favour of the respondent no. 5. Just as the registered deeds of conveyance of the respondent no. 5 carry a presumption of correctness, the same logic is applicable to the registered deed of lease subsequently executed in favour of the Company, of which the writ petitioner is a director, which was, in turn, executed on the strength of a registered Power of Attorney given by the respondent no. 5, both of which also carry their own presumption of correctness.

13. Hence, even if all the said registered documents are presumed to be correct in the absence of rebuttal at this stage, it is *prima facie* established that the respondent no. 5, after purchase of the disputed property, let out the property through its constituted attorney Partha De to the Company. Hence, it cannot be ruled out at the outset that the writ petitioner, as a director of the Company, is in possession of the property.
14. Moreover, the respondent no. 5 has itself argued that the disputed property is an agricultural land and its physical possession cannot be ascertained. The said argument is a double-edged sword inasmuch as the claim of physical possession of respondent no. 5 itself can also be negated as non-ascertainable on the same ratio.
15. In any event, the question of right, title and possession on the property has to be finally ascertained in the pending title suit. The WBSEDCL, being a distribution licensee, cannot conclusively decide the question of possession, being incompetent in law to do so.
16. Secondly, the present case is one where initially, being satisfied as to the possession of the writ petitioner on the basis of the documents produced by the petitioner, the WBSEDCL had given a new electricity service connection

to the petitioner, which the petitioner enjoyed for some months till disconnection. The WBSEDCL has, *post facto*, acted on the allegation of the respondent no. 5-company and disconnected the petitioner's electricity supply.

17. The petitioner was obviously found to be in occupation of the premises by the WBSEDCL in the first place, when giving the connection. In such context, the ratio laid down in the Full Bench judgment of three judges of this court, that is, *Abhimanyu Mazumdar vs. Superintending Engineer [AIR 2011 Cal 64]*, cited by the petitioner, is applicable inasmuch as it was held that a person in "settled possession" is entitled to get electricity under Section 43 of the Electricity Act, 2003, irrespective of the lawfulness/legality of such possession.
18. Sections 56 and 126 of the Electricity Act, 2003 are the legal provisions under which the electricity supply of an existing consumer can be disconnected. However, in the present case, there is no allegation of the writ petitioner being guilty of any act of commission or omission to attract the said provisions or to entitle the WBSEDCL to disconnect the supply of the petitioner. There is nothing on record to indicate conclusively that the documents of possession shown by the petitioner are forged or fabricated. Thus, the WBSEDCL acted *de hors* its authority, as conferred by law, to disconnect the petitioner's supply.
19. Moreover, the ratio laid down by a co-ordinate Bench of this court in *Ashit Kumar Palit vs. WBSEDCL & Ors.*, reported at *AIR 2009 Cal 1*, is apt in the present context. The disconnection was effected at the behest of the respondent no. 5, who is not the consumer, whereas the petitioner, being

the consumer, did not ask for disconnection. Hence, the extant regulations, which provide for disconnection at the instance of a consumer, cannot also be invoked in the present case.

20. Section 43 of the Electricity Act impels the WBSEDCL to give electricity connection to the writ petitioner upon compliance of formalities and production of *prima facie* proof of occupation. The lawfulness or otherwise of such occupation cannot be a determinant in that regard. Once such connection is given, it cannot be disconnected merely on the allegation of a third party which has not yet been established conclusively before a competent court of law, nor can be decided by the distribution licensee to permit it to resile from its previous position.
21. The *post facto* insistence of the WBSEDCL on production of a 'way leave' permission from the respondent no. 5 was unlawful and could not furnish a basis for disconnection of electricity of the petitioner. In fact, the third citation relied on by the petitioner, rendered by a co-ordinate Bench of this court in *Subhash Ghosh vs. WBSEDCL & Ors.* [2013 SCC OnLine Cal 22051], also supports the contention that an occupier need not produce a 'way leave' permission from the owner to get an electricity connection in the former's name.
22. There cannot arise any question of violation of the ad interim injunction order obtained by the respondent no. 5 since giving of an electricity connection *ipso facto* cannot be construed to be a transgression of possession. Moreover, there is no subsisting injunction against the WBSEDCL or the writ petitioner, in his individual capacity. Even though the petitioner claims possession as a director of the Company, which might

arguably attract the rigour of the injunction order, the same has not been violated in any manner by giving electricity connection to the petitioner.

23. That apart, it is well-settled that mere electricity connection cannot create any special equity or right in favour of the consumer. Right, title and possession has to be finally adjudicated by a competent civil court, which exercise is pending before the civil court at present.
24. The respondent no. 5 has relied on a co-ordinate Bench judgment in the matter of *Hrishikesh Pandey*, reported at 2017 SCC OnLine Cal 8476. However, no ratio was laid down in the said brief judgment. The order passed by the learned Single Judge was entirely in the facts of the said case and has no bearing upon the instant *lis*.
25. The second judgment relied on by the respondent no. 5, also of a co-ordinate Bench of this court, is *Sri Rabindranath Pal vs. WBSEDCL & Ors.*, reported at 2014 SCC OnLine Cal 3317. In the said judgment, the learned Single Judge held that the occupation of the petitioner had not been established. In the present case, however, the WBSEDCL itself gave the connection to the petitioner upon production of relevant documents with regard to possession. Hence, inasmuch as the WBSEDCL is concerned, there cannot be a *volte face* on that aspect of the matter in order to justify subsequent disconnection.
26. In *Sisir Kumar Ghosh vs. State of West Bengal & Ors.* [2013 SCC OnLine Cal 19406], also cited by the respondent no. 5, the learned Single Judge merely directed any engineer of the distribution company to inspect the shop to ascertain whether the petitioner was in possession thereof. In contrast, in the case at hand, the WBSEDCL, upon being satisfied of the possession of

the petitioner on production of relevant documents, had not only given the connection to the petitioner but also acquiesced to its continuance for some time. At no point of time has it been established conclusively or beyond doubt that the documents produced by the petitioner were *ex facie* forged or manufactured. Thus, the analogy and ratio of the said citation is not applicable to the instant case at all.

- 27.** In *Samsul Haque Mollick vs. CESC Ltd. & Ors.* [AIR 2006 Cal 73], also relied on by the respondent no. 5, the learned Single Judge held that an unauthorised occupant is not entitled to enjoy the statutory right of getting electricity. However, it has not been proved conclusively before any competent civil court or other forum that the present petitioner is in 'unauthorised' occupation of the property. Moreover, with utmost respect, the above ratio has subsequently been overruled by implication in the Full Bench judgment of this court of 2011, delivered in *Abhimanyu Mazumdar (supra)*.
- 28.** As such, the WBSEDCL acted without jurisdiction and *de hors* the law in disconnecting the electricity supply of the writ petitioner in the instant case.
- 29.** Hence, W.P.A. No.9630 of 2022 is allowed, thereby directing the WBSEDCL to restore the electricity connection of the writ petition, which is the subject-matter of the present *lis*, immediately, latest within 48 hours from the passing of this order, without charging any further amount from the petitioner for the disconnection or the reconnection. The WBSEDCL shall act on the communication of the learned advocate(s), accompanied by server copy of this order, without insisting upon prior production of

certified copy thereof, for the purpose of compliance with the above direction.

30. However, it is made clear that such restoration shall not, by itself, create any special equity or right in favour of the petitioner and/or confer any such right which the writ petitioner otherwise does not have in law. The civil court shall decide all issues pending before it independently in accordance with law, without being influenced by any of the observations made herein.
31. Furthermore, the restoration of electricity pursuant to this order shall be subject to the decree of the civil court and shall not prejudice the rights of the WBSEDCL to act in accordance with law in case of non-payment of current charges raised validly or future contravention of any law by the writ petitioner, if any.
32. Urgent certified copies, if applied for, be issued by the department on compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)

Later:

After the judgment is passed, a prayer for stay of operation of the same is made on behalf of the WBSEDCL and the private respondents.

In view of certain substantial legal questions being involved for adjudication in the present matter, such stay is granted till January 18, 2023.

(Sabyasachi Bhattacharyya, J.)

