

AD-10
Ct No.09
31.07.2023
TN

WPA No. 12003 of 2023

Sri Shyamal Singha

Vs.

The Chairman Managing Director, West Bengal State
Electricity Distribution Company Ltd. and others

Mr. Avijit Chakraborty

.... for the petitioner

Mr. Asif Dewan

.... for the WBSEDCL

Mr. Pinaki Ranjan Chakraborti

.... for the respondent no. 6

Mr. Sakya Maity

.... for the proposed intervenor

The petitioner has challenged a notice of disconnection dated April 24, 2023. During the course of pendency of the writ petition, the disconnection has been effected in terms of the said impugned notice.

Learned counsel submits that the petitioner has been enjoying a new electricity connection in respect of the premises and has been complying with all formalities, including payment of electricity charges. However, the same was disconnected, upon issuing the impugned notice, on the flimsy pretext that the petitioner did not produce the tenancy agreement-in-question.

As such, the writ petition ought to be allowed and the electricity should be restored to the petitioner.

Learned counsel appearing for the Distribution Licensee submits that the petitioner, even after the ownership was transferred in favour of the present respondent no. 6, had obtained the electricity connection by producing a tenancy agreement with the erstwhile landlord. The same being a fraudulent application and defective as well, the West Bengal State Electricity Distribution Company Limited (WBSEDCL) insisted on production of a current tenancy agreement. The same could not be produced, for which the impugned notice was issued and subsequently the connection of the petitioner was severed.

Learned counsel appearing for the private respondent no. 6 submits that the petitioner deliberately suppressed that the private respondent has acquired title in the property in a liquidation sale.

As such, it is submitted that the wilful attempt of the petitioner to mislead the WBSEDCL for getting the electricity connection was, at least, defective. Such defective application, accordingly, ought to have been set aside and the disconnection has been rightly effected.

It is further contended by learned counsel for the respondent no. 6 that the writ petition is not maintainable in its present form. It is contended that although the disconnection notice was challenged therein, during the interregnum, the disconnection has been effected. No amendment to the writ petition in that regard has been carried out or even prayed for by the petitioner. Accordingly, it is submitted that the relief as sought cannot be granted.

Mr. Maity, learned counsel having instruction to appear for one of the alleged partners of the respondent no. 6, the present owner of the property, submits that his client seeks to intervene in the present writ petition. It is submitted that the said partner of the respondent no. 6-firm has already lodged a complaint regarding fraudulent suppression by the petitioner in getting the electricity connection.

Upon a query of court, it transpires that the nature of the alleged fraud is similar to that which has been canvassed by the respondent no. 6 in the present writ petition.

Hence, since the interest of the respondent no. 6-partnership firm is sufficiently represented in the writ, further impleadment of the individual partner of the said firm is not required. In any event, the point canvassed by the proposed intervenor has

already been urged by the present respondent no. 6, thereby making the impleadment of the said intervenor irrelevant.

Hence, such prayer for intervention is refused.

It is well-settled that a person who is in settled possession of a property is entitled to electricity connection under Section 43 of the Electricity Act, 2003.

Although there is a mechanism of the Distribution Licensees for insisting upon production of a 'no objection' from the owner of the property for giving electricity connection, the same is, at best, directory, in order to obviate subsequent complications.

However, there is nothing in the law for the licensees to insist upon the production of the same as a mandatory pre-requisite of giving electricity connection, in the event the applicant furnishes sufficient material to show his/her possession.

Even as per the admission of the WBSEDCL in its written communication dated April 24, 2023 (Annexure P7 at page-36 of the writ petition), the petitioner had, at the first instance, while taking the electricity connection, furnished copies of e-trade licence in his favour, apart from a copy of his Aadhaar card and a self-declaration.

Although the tenancy agreement supplied by the petitioner might have been obsolete at the relevant date, in view of a transfer having been effected in favour of the present respondent no. 6, the WBSEDCL does not have the authority to decide the tenancy or jural relationship of the petitioner vis-à-vis the actual owner of the property. The furnishing of the obsolete tenancy agreement could, at least, be construed by the WBSEDCL to be a circumstantial proof of possession of the petitioner.

Under the relevant provisions of the Evidence Act, a person in possession is presumed to so continue, unless a person, who alleges that such possession has terminated, rebuts the said presumption. Applying such principle, it is for the respondents to show that the petitioner's possession, on the strength of the previous tenancy under the erstwhile landlord, which is also substantiated by the trade licence and Aadhaar card produced by the petitioner, has since ended.

In the absence of anything to so prove, the petitioner is obviously in occupation of the property.

The defect in information furnished by the petitioner, as alleged by the WBSEDCL, could, at best, be an irregularity, which is irrelevant for the purpose of giving the electricity connection, which only

mandates the Licensee to ensure that the formalities regarding payments and proof of possession of the applicant is furnished.

Having so done, as accepted by the WBSEDCL while giving the connection to the petitioner, the WBSEDCL acted *de hors* its authority and in contravention of law in subsequently disconnecting the electricity supply of the petitioner on flimsy grounds.

In any event, the transfer of title in the property from the erstwhile landlord of the petitioner to the respondent no. 6 could not have vitiated or rendered fraudulent the previous tenancy agreement between the petitioner and his erstwhile landlord.

Hence, such disconnection notice dated April 24, 2023 and the subsequent disconnection in pursuance thereof are palpably illegal and ought to be set aside.

Accordingly, WPA No. 12003 of 2023 is allowed on contest, thereby setting aside the impugned notice of disconnection dated April 24, 2023 and directing the WBSEDCL to restore the electricity supply of the petitioner within forty-eight hours from now.

The parties, for the purpose of compliance, shall act on a server copy of this order, without insisting upon prior production of a certified copy.

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.)