

25.01.2023

MAT 1158 of 2022
With
CAN 1 of 2022
Shri Tapan Kumar Nath
Vs.
The State of West Bengal & Ors.

Mr. Supriya Ranjan Ghosh
Mr. J. Mukherjee

... ... for the appellant

Ms. Sutapa Sanyal
Ms. Susnita Saha

... ... for the State

Ms. Mitali Bhattacharya

... ... for the respondent nos.2 to 4

The writ petitioner (appellant herein) is aggrieved with the order of the learned Single Judge dated 8th July, 2022 whereby WPA 11943 of 2022 has been disposed of with certain directions.

Appellant had filed the writ petition with the plea that the appellant along with his two brothers is living jointly in the residential property recorded in the name of their deceased mother Sabitri Bala Nath without demarcation and partition. Further plea was raised that there was some difference of opinion amongst the brothers in respect of the consumption of electricity and periodical bill payments, therefore appellant had applied for new electricity connection in the petitioner's occupied portion.

Since no proper action on the said application was taken, therefore appellant had prayed for a direction to the respondents to effect supply of electricity at the occupied portion of the premises of the appellant.

Learned Single Judge has disposed of the petition granting liberty to the petitioner to apply either for transfer of name in respect of the existing electricity meter in the name of the appellant with appropriate way leave certificate/consent from his co-owner or in the alternative to apply for a new connection jointly with the co-owners/or to apply for a new connection with such consent/way leave certificate as mentioned in the order.

Submission of learned counsel for the appellant is that in terms of Section 43 of the Electricity Act and in view of the Full Bench Judgment of this Court in the matter of Abhimanyu Mazumdar Vs. Superintending Engineer and another, reported at AIR 2011 Cal 64 appellant has right of supply of electricity which cannot be denied.

Learned counsel for the respondent electricity company has submitted that the meter exists in the name of the mother of the appellant who died and, therefore the appellant is required to take the consent of all other brothers and that no partition of property has taken place.

Learned counsel for the State has also objected to the prayer by submitting that the co-owners have not been impleaded in the writ petition and consent of the co-owners is necessary.

We have heard the learned counsel for the parties and perused the record.

Undisputedly, no partition of the property in question has taken place amongst the brothers and the plea of the appellant in the writ petition itself is that the premises is without demarcation and partition. Though in the writ petition the petitioner has claimed separate electricity connection in respect of the alleged occupied portion of the premises but the other two brothers have not been impleaded in the petition.

It has rightly been pointed out by learned counsel for the respondents that there is no denial of supply of electricity to the appellant but the only issue is in respect of compliance of formalities for taking the electricity connection in such a joint premises.

In view of this the appellant is not entitled to the benefit of the Full Bench judgment in the case of Abhimanyu Mazumdar (supra).

Considering the entire factual position of the case, we are of the opinion that the learned Single Judge has rightly disposed of the petition by granting liberty to the petitioner as mentioned above.

Hence, no case for interference in the order of the learned Single Judge is made out.

Appeal is accordingly dismissed.

Connected application is also dismissed.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)