

01 18.04.2023
AN Ct. No. 01
S.S.

FMA 1095 of 2022

Sri Uday Kumar Ghosh
Vs.
The C.E.S.C. Limited & ors.

Mr. Asim Banerjee
Ms. Mrinmoyee Roy Chowdhury
... For the appellant

Mr. Om Narayan Rai
Mr. Debanjan Mukherjee
... For the CESC

1. Heard learned counsel for the parties at length.
2. This intra-Court appeal filed by the writ petitioner is directed against the order dated 08.06.2022 being WPA 8775 of 2022 by which the writ petition filed by the appellant seeking for grant of separate electricity connection for the premises stated to be in his occupation was rejected. The ground of rejection being that the property is a joint property and there are other co-sharers and there is a domestic electricity connection standing the name of late Chandrabati Ghosh who is stated to be the late grand mother of the appellant and there are other co-sharers of the property who were also residing there.
3. The learned writ court found that until and unless the appellant approaches the civil Court by filing a suit for partition, or obtain an order from the probate Court, the respondents cannot interfere in the matter as there appears to be certain resistance created by the co-sharers of the property. As rightly pointed out by the learned writ court that Section 43 of the 2003 Act is not an unfettered

right but is circumscribed by the regulations framed by the West Bengal Electricity Regulatory Commission as per the 2003 Act itself.

4. The contention of the appellant is that he is in exclusive possession of one of the portions of the property left behind by late Chandrabati Ghosh which is separated from the rest of the property by a wooden guard. Learned counsel for the C.E.S.C. Limited submits that in the inspection conducted in the premises, it is seen that there is no separate portion which can be said to be in exclusive possession of the appellant but there is only a wooden almirah. Two issues have to be examined. Firstly, the electricity service connection cannot be continued in the name of a dead person. Secondly, until and unless the appellant is able to establish and show that he is in a separate possession of a portion of the joint property having independent facility like kitchen, wash room etc., the appellant cannot be stated to be in exclusive possession of a portion of the joint property. Therefore, onus lies on the appellant to establish this fact and if the appellant is able to establish this fact, he is free to make an application to the authorities and the authorities shall conduct an inspection and if they are satisfied that there is a separate and distinct area exclusively occupied by the appellant with all facilities which are required for residential accommodation, the respondent shall consider such request in accordance with law and relevant regulations. The appellant is at liberty to give such an application within two weeks from date and if

such application is made an inspection is to be conducted at the earliest and necessary orders be passed on merits and in accordance with law. The respondent C.E.S.C. Limited shall also look into the matter as to how the electricity connection can be continued to remain in the name of a dead person and necessary instructions be given in this regard to the persons who are in occupation of the joint property.

5. With the above directions, the appeal stands **disposed of.**

(T. S. Sivagnanam)
Acting Chief Justice

(Hiranmay Bhattacharyya, J.)