

In the High Court at Calcutta
Constitutional Writ Jurisdiction

Appellate Side

The Hon'ble Justice Sabyasachi Bhattacharyya

WPA No. 26937 of 2022

M/s. R.N. Roy & Bros.

Vs.

**Calcutta Electric Supply Corporation Limited
and others**

For the petitioner : Mr. Kamlesh Jha,
Ms. Srabani Biswas

For the CESC Limited : Ms. Sreemoyee Mitra

For the respondent no.3 : Mr. Samrat Sen,
Ms. Amrita Panja Moulick

Hearing concluded on : 21.04.2023

Judgment on : 25.04.2023

Sabyasachi Bhattacharyya, J:-

1. The writ petition has been filed by a partnership firm by the name of M/s. R.N. Roy and Bros. represented by one of its partners, namely Tulsi Bag.
2. It is alleged by the petitioner that the petitioner has been running a business at the disputed property and has produced photocopy of a Certificate of Enlistment issued by the Kolkata Municipal Corporation and two rent receipts. In its reply, the petitioner has also annexed

certain other documents, the originals of which are produced at the time of hearing for perusal of court. According to the petitioner, the partnership firm has two partners, Tulsi Bag and one Krisanu/Krishanu Bag. In reply, the petitioner has annexed a licence granted by the Commissioner of Police, Kolkata, a consolidated electricity bill, receipt for a Certificate of Enlistment, a deed of partnership dated August 31, 2022, etc. It is, thus, submitted that the petitioner is in settled possession of the property and is entitled to electricity supply to the premises. However, due to resistance by the private respondent no.3/landlord, the CESC Limited could not hold an inspection for the purpose of ascertaining the feasibility of giving such connection to the petitioner.

3. Learned counsel appearing for the petitioner places reliance on a three-Judge Bench decision of this Court reported at *AIR 2011 Cal 64 [Abimanyu Mazumdar Vs. The Superintending Engineer and another]*. The Full Bench held therein, *inter alia*, that an actual occupier in settled possession of the property, irrespective of whether he is a lawful occupier or not, is entitled to electricity supply.
4. The learned Senior Advocate appearing for the private respondent contends that the private respondent is an executor of a Will of the original owner.
5. Learned senior counsel further submits that in the Full Bench decision of this Court in *Abimanyu Mazumdar (supra)*, the yardsticks were stipulated by the Full Bench for ascertaining whether a person was in settled possession of a property.

6. It is contended that a trespasser, in order to be in “settled possession”, must be in possession extending over a sufficiently long period of time and acquiesced to by the true owner. Merely stray or even intermittent acts of trespass do not give such a right against the true owner.
7. It is further argued that the Full Bench held that the “settled possession” must be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt at concealment by the trespasser.
8. The learned Senior Advocate submits that the petitioner Tulsi Bag, claiming himself to be a partner of the firm, has failed to establish that he has been in occupation of the property continuously and to the knowledge of the true owner.
9. By placing reliance on a supplementary affidavit, filed with leave of Court, it is submitted that the documents annexed to the same go on to indicate that the purported Certificate of Enlistment was issued in the name of the partnership firm upon production of certain rent receipts which themselves do not prove the petitioner’s possession in respect of the property.
10. The learned Senior Advocate places reliance on the partnership deed produced by the petitioner to show that the same was entered into only in the year 2022 and, as such, the much earlier rent receipts annexed to the writ petition could not prove the possession of the said partnership firm, since those were issued before the formation of the partnership.

11. In the first rent receipt annexed at page 13 of the writ petition, the signature of the private respondent purportedly appears. It is of March 2, 2015 and is a *kuchcha* receipt issued in favour of one “Ram Nirikshman Roy and Brothers” in respect of the disputed property. However, as per the partnership deed, the said firm did not come into existence prior to the year 2022.
12. It is further argued that the second rent receipt (Annexure P2 to the writ petition) was also issued in respect of the same tenant. However, no connection between the present petitioner and the said firm has been indicated at the relevant period. The second rent receipt is of the Bengali year 1418 B.S., which corresponds to the English Calendar Years 2011-2012.
13. It is further argued that if the petitioner was all along in possession of the property, it would not have applied for a new electricity connection as late as on October 10, 2022.
14. The learned Senior Advocate next contends that the receipt for Certificate of Enlistment annexed to the affidavit-in-reply of the petitioner was issued on February 16, 2016 and is based on the unilateral declaration of the applicant. Hence, it does not prove conclusively the existence of a firm at the premises.
15. Moreover, such receipt has been issued in favour of M/s. R.N. Roy and Co. and not M/s. R.N. Roy and Bros. In 2016 itself, the private respondent had initiated a suit for eviction in respect of the same premises against the partnership firm M/s. R.N. Roy and Bros., arraying therein the actual partners of the firm, who are the ‘Roy’s

and not the 'Bag's. Thus, the identity of the two entities has not been established.

16. Again, the Certificate of Enlistment issued by the KMC was in the name of M/s. R.N. Roy and *Bros.*
17. Hence, it is argued that there is no corroboration between the documents produced by the petitioner in respect of its argument of possession.
18. The learned Senior Advocate also points out that the partnership deed of 2022 does not contain any recital indicating that there was a previous sole proprietorship in the name of M/s. R.N. Roy and *Bros.* and or that it was converted into a partnership firm by the same name.
19. The respondent no.3 relies on a co-ordinate Bench judgment of this Court, reported at (1994) SCC OnLine Cal 174 [*USG Financial Services (Pvt.) Ltd. and another Vs. The Calcutta Municipal Corpn. and another*], for the proposition that merely because a Certificate of Enlistment is granted to a person, it cannot be said that a licence is granted in his favour to carry on business. Such certificates are issued for limited purpose.
20. Section 200(3) of the Calcutta Municipal Corporation Act, 1980 (for short, "the 1980 Act") it was held, does not contemplate a detailed enquiry, particularly relating to legality or validity of the right of the person applying for grant of Certificate of Enlistment or otherwise.
21. The learned Senior Advocate for the respondent no.3 next cites *Samsul Haque Mollick Vs. CESC Ltd. and others* [AIR 2006 Cal 73], another co-

ordinate Bench judgment of this Court, where it was held that issuance of a licence in his favour does not make the petitioner an occupier or a lawful occupant of any part of the premises.

22. Although it was held in the said judgment that an unauthorised occupant is not entitled to electricity, such proposition has subsequently been overruled by the Full Bench decision of this Court. However, inasmuch as the ratio laid down therein regarding the trade licence not being sufficient proof of occupation is concerned, the same has not been reversed in any subsequent judgment.
23. Upon hearing learned counsel for the parties, the germane question which arises for consideration is whether the petitioner is in “settled possession” of the disputed property within the contemplation of the Full Bench judgment of this Court.
24. In *Abimanyu Mazumdar (supra)*, the Full Bench held that if a trespasser is in ‘settled possession’ of the property belonging to the rightful owner, the latter shall have to take recourse to law and the law will come to the aid of a person in peaceful and settled possession by injunctioning even a rightful owner from using force or taking law in his own hands and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation) if the latter has dispossessed the prior by use of force. It is the settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the true owner.
25. Although stray and intermittent acts of trespass cannot amount to settled possession, we are considering in the present case as to

whether the petitioner has been able to show *prima facie* that the petitioner is in settled possession of the property.

26. It has to be borne in mind that neither the Distribution Licensee nor this Court, sitting in writ jurisdiction over the authority of the licensee, conclusively determine the title and /or possession of a person with regard to a property. What is to be seen is whether, for the purpose of getting electricity connection and to come within the purview of Section 43 of the Electricity Act, 2003 (hereinafter referred to as, “the 2003 Act”), the petitioner has been able *prima facie* convince the Court of its possession.
27. A chain of events has been sought to be impressed upon the Court by the petitioner. From the documents on records, it is seen that there are two rent receipts of the year 2011-12 and 2015, which were issued respectively by the original owner and the present private respondent no.3, the admitted executor of the Will of the original owner.
28. As long back as in the year 1968, the Assistant Commissioner, Commercial Tax, North Circle, had issued a communication regarding payment of tax with regard to Appeal Case No.A-232/68-69 to M/s. R.N. Roy and Co. (Prop. Satish Chandra Bag). The expression “Prop.” signifies “proprietor”. As such, the said entity was a proprietorship of Satish Chandra Bag.
29. From the partnership deed dated August 31, 2022 produced by the petitioner, it is seen that one of the partners, Krisna Bag is the son of one Swapan Kumar Bag.

- 30.** We find from the annexures to the affidavit-in-reply of the petitioner that a licence under the West Bengal Baby Food Licensing Order, 1966 was issued, at least till 1993 in favour of M/s. R.N. Roy and Co. standing in the name of the present petitioner Tulsi Bag alias Tulshi Das Bag, Swapan Kumar Bag and others.
- 31.** The said licence was apparently renewed, as per the seals appearing on the document, at least from 1986 to 1993.
- 32.** Again, a licence granted by the office of the Commissioner of Police, Kolkata, to Krisna Bag as a keeper of a house or place of public resort and entertainment, on March 9, 2016.
- 33.** A consolidated electricity bill dated August 31, 2015, also in respect of the same premises, was issued in the name of “Shri R.N. Roy” and has come from the custody of the writ petitioner. The receipt for Certificate of Enlistment was dated February 6, 2016. Such Certificate, of a contemporaneous period, has also been annexed with the affidavit-in-opposition filed by the respondent no.3, issued in the name of M/s. R.N. Roy and Co.
- 34.** The respondent no.3 argues that the signatory in one of the rent receipts produced by the petitioner, Subhash Chandra Sur, expired on December 9, 2019, as per death certificate produced with its affidavit-in-opposition. Hence, the said rent receipt could not have been issued on the relevant date.
- 35.** However, it is seen from the rent receipt, a copy of which has been annexed, that the same was issued in the Bengali Year 1418 B.S.,

which roughly corresponds to the English Calendar Year 2011-12 and, thus, was issued prior to the date of death of Subhash Chandra Sur.

- 36.** Such rent receipts were issued in the name of M/s. R.N. Roy and Bros.
- 37.** Thus, we find that although the terms 'M/s. R.N. Roy and Co.' and 'M/s. R.N. Roy and Bros.' have been used interchangeably at various points of time, the Bags, including the father of one of the partners of the present partnership firm, has been in possession of the property in some capacity or the other. Be it as a proprietor or a partner, the petitioner has also been found to feature in some of the documents of yester years, for example, the licence issued under the West Bengal Baby Food Licence order, 1966 which was renewed at least from 1986 to 1993.
- 38.** The eviction suit was filed by the private respondent no.3 in the name of M/s. R.N. Roy and Bros., although mentioning persons other than the petitioner as its partners.
- 39.** Hence, the existence of M/s. R.N. Roy and Bros. at least in 2016 is admitted by the respondent no.3 itself.
- 40.** The mere user of the different expressions 'M/s. R.N. Roy and Co.' and 'M/s. R.N. Roy and Bros.' in different documents cannot itself vitiate the very existence of a concern by the said name at the premises during the entire relevant period, be it as a proprietorship or a partnership firm.

41. This is not a case where the petitioner has been shown to be a trespasser by dint of mere “stray or intermittent acts of trespass”, but in occupation of the property over a number of years.
42. At this stage, the writ court cannot make a detailed enquiry, upon appreciation of evidence and records, as to whether the same was to the knowledge of the owner or there was any attempt at concealment by the trespasser.
43. In the present case, rather, at all material points of time, the petitioner or the firm, either in its incarnation as ‘M/s. R.N. Roy and Co.’ or in the Avatar of ‘M/s. R.N. Roy and Bros.’ has consistently obtained licences, receipts or permissions from several authorities in respect of the disputed premises.
44. Documents have been produced for different periods from the year 1968 till 1993 over and above the current Certificate of Enlistment coupled with the partnership deed of 2022.
45. Such *prima facie* proof of occupation over a large span of time cannot be brushed aside merely as stray or intermittent act of trespass.
46. As discussed above, it has been settled by the Full Bench of this Court in *Abimanyu Mazumdar (supra)* that if a person is in settled possession of the property, irrespective of the lawfulness of such possession, he is entitled to get electricity connection at the premises as an occupier under Section 43 of the 2003 Act.
47. The respondent no.3 has hinted at applicability of the Works of Licensees Rules, 2006, which uses the expression ‘lawful occupier’. However, it is premature to delve into such issue at this stage since

the Works of Licensees' Rules operates on a somewhat different footing. The said Rules govern the laying of electricity connection or lines to enable the distribution of electricity to consumers, whereas Section 43 of the 2003 Act deals with the very right of an occupier to get electricity connection at the premises, which precedes the laying of cables.

48. To assert such right, as held by the Full Bench of this Court, it is not necessary for a person to show the legality of his occupation. Mere settled possession is sufficient for such purpose. Lawfulness of occupation may, at best, be relevant to some extent when permission is required to be sought by the licensee for laying cables to take electricity connection over somebody's property. Hence, the reliance of the respondent no.3 on the Works of Licensees' Rules, 2006 in the present context is misplaced.
49. Insofar as the veracity of a trade licence vis-à-vis possession of property is concerned, the learned Single Judge held in *Samsul Haque Mollick (supra)* that the trade licence does not make the petitioner an "occupier or a lawful occupant" of any part of the premises. It is clearly seen from such expression used in paragraph 4 of the said judgment that the terms "occupier" and "lawful occupant" were used interchangeably with the conjunction "or" inserted inbetween. The next few sentences clearly indicate that the expression "occupier" used in Section 43 of the 2003 Act was construed by the learned Single Judge to mean a lawful or authorised occupant, leading to the conclusion that the expression "shall not include an unauthorised

occupant of a premise". Thus, the said observation is linked inextricably with the proposition laid down therein, that is, the unauthorised occupant is not entitled to get electricity connection, which proposition has been overruled by the Full Bench judgment of this Court in *Abimanyu Mazumdar (supra)*. In any case, it is well-settled that mere issuance of a trade licence cannot confer legal right of possession of a person in respect of the property, if the person does not otherwise have title or authority from the true owner.

50. Hence, the said observation in *Samsul Haque Mollick (supra)* is of no relevance to the present case.
51. Insofar as *USG Financial Services (supra)* is concerned, it was held by the learned Single Judge, while deciding on the scheme and purport of the Calcutta Municipal Corporation Act, 1980, that only because a Certificate of Enlistment is granted, the same does not mean that a licence is granted in his favour to carry on business. However, nothing is observed in the said judgment regarding the occupation or possession of the premises.
52. Rather, it is clearly observed by the Court that an enquiry held under Section 200(3) of the 1980 Act was for a limited purpose, that is, for the purpose of ascertaining whether the contents of the application are correct or not. One of the contents of such certificate is the address, signifying *prima facie* occupation of the applicant in the premises mentioned in his application. Hence, the cited decision endorses the view that the enquiry held for the purpose of issuing a certificate of enlistment carries a presumption of correctness relating

to its contents, including the location of the business-in-question for which the certificate is issued.

53. As observed in *USG Financial Services (supra)*, such enquiry does not contemplate a detailed examination of the legality or validity of the right of the person applying.
54. However, that is the precise proposition laid down in the Full Bench decision of this Court in *Abhimanyu Mazumdar (supra)*, to the effect that legality of occupation is irrelevant for the purpose of grant of electricity, provided a person is shown to be in occupation of the property.
55. A comprehensive assessment of the materials on record in the present case clearly indicates that the petitioner has produced sufficient documents to raise *prima facie* presumption of the petitioner being in occupation of the premises, lastly pursuant to the partnership deed entered into by the petitioner.
56. As held earlier, neither the writ court nor the distribution licensee has the jurisdiction to examine, upon assessment of detailed evidence, as to whether the petitioner is in lawful possession of the property or not.
57. Contrary to the argument of the learned Senior Advocate for the respondent no.3, the findings of this Court regarding the petitioner being in settled possession are not conclusive but are tentative, arrived at only for the purpose of deciding whether the petitioner is entitled to electricity within the contemplation of Section 43 of the 2003 Act.

- 58.** Hence, the rights and contentions of the parties in a pending suit cannot, in any manner, be affected by the observations made herein.
- 59.** Insofar as the CESC Limited is concerned, the same, as a distribution licensee, plays a neutral role, which is appropriate keeping in view the impartiality which ought to be maintained by the licensee.
- 60.** However, it has been submitted by the CESC Limited that its personnel could not hold inspection to ascertain the feasibility and raise a quotation for giving a new electricity connection to the petitioner at the said premises, due to resistance put up by the respondent no.3 and her men and agents.
- 61.** In view of the above discussions, the petitioner has been able to satisfy this Court sufficiently as regards the petitioner's right to get an independent electricity connection at the premises-in-question. Accordingly, WPA No.26937 of 2022 is allowed, directing the CESC Limited to hold an inspection at the premises-in-question within a fortnight from date to ascertain the feasibility of giving electricity connection to the petitioner and, upon such inspection, if otherwise feasible to give connection, to raise a quotation and serve it on the petitioner.
- 62.** Upon compliance of all formalities by the petitioner in that regard, the CESC Limited shall give the new electricity connection to the petitioner at the disputed premises within one week from the date of such compliance of formalities. Either on the occasion of the inspection or giving electricity connection to the petitioner, if the CESC Personnel are obstructed in any manner by the private

respondent no.3 and/or her men and agents in doing so, it will be open to the CESC Personnel to approach the local police station for adequate police assistance, which will be given by the Inspector-in-Charge/Officer-in-Charge, as applicable, of the said police station at the cost of the petitioner, by acting on a server copy of this order. It will be open to the police personnel to remove any hindrance or padlock, if put up to resist the CESC Personnel from entering into the premises, for the limited purpose as indicated above.

- 63.** It is, however, made clear that nothing in this order and/or the electricity connection, if given to the petitioner, shall prejudice the rights and contentions of the parties in any manner before any court of law or other legal forum.
- 64.** There will be no order as to costs.
- 65.** Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)