

22.11.2023
Sl. No.115
pkd

IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
[Appellate Jurisdiction]

M.A.T. 33 of 2022

SAIYAM GOYAL

VS.

STATE OF WEST BENGAL AND ORS.

Mr. Sandip Mandal

Mr. Abhilash Mittal for the appellant

Mr. Sudipta Kanta Bhowmik

Mr. Anirban Banerjee

Ms. Dipti Bhowmik for WBSEDCL

Mr. Hirak Barman

Mr. Bedashruti Bose for State

Mr. Kunaljit Bhattacharjee

Mr. Alok Saha for respondent nos.7&8

The appeal is directed against the order dated February 28, 22 passed by the learned single Bench in WPA 99 of 2022.

By the impugned order, the learned single Bench found that there was title dispute with regard to the property in question and, therefore, held that the distribution Company cannot be directed to grant electricity connection at the premises in question. Parties were granted liberty to apply before the distribution Company after obtaining necessary orders from the competent court.

Learned advocate appearing for the appellant submits that, the appellant is in possession of the property concerned. He relies upon [2011] 12 SCC 314 [Chandu

Khamaru vs. Nayan Mlik And Others] in support of the contention that, the disputes inter-se between the private parties is not an impediment for grant of electric supply by the distribution Company.

Learned advocate appearing for the private respondent, in his usual fairness, draws the attention of the court to AIR 2011 Cal 64 [Abhimanyu Mazumdar vs. Superintending Engineer And Anr.] and submits that, the facts of Abhimanyu Mazumdar [supra] are distinguishable so far as the present case is concerned. In the facts of the present case, none of the parties can claim to be in settled possession of the immovable property. The land is lying vacant. There is a title suit pending in respect of the property concerned. His client did not obtain any electric supply in respect of the property concerned and is entitled thereto.

State and the distribution Company are represented.

Apparently, the private parties are litigating with regard to the right, title and interest of the property concerned. There is a civil suit pending in which there are orders of injunction.

None of the orders passed by the civil court can be construed to mean that, parties to the civil suit would not be entitled to electric supply at the property in question.

Appellant applied for electric supply.

Distribution Company did not provide the same. Hence, the appellant filed the writ petition.

The writ petition was disposed of by the impugned order as noted above on the ground that, there was a dispute with regard to the title.

With regard to the disputes regarding title, the Supreme Court in Chandu Khamaru [supra] held that, a distribution Company was under a legal obligation to supply electricity and that supply of electricity cannot be denied on the ground of dispute.

The Special Bench of this Hon'ble Court in Abhimanyu Mazumdar [supra] construed various provisions of the Electricity Act, 2003 and the Works of Licence Rules, 2006. It held that, lawful occupier of a premises for the purpose of grant of electric supply means actual occupier in settled possession. Such person in settled possession of the property can be a trespasser, unauthorized encroacher, squatter of any premises and despite such status such person can apply for supply of electricity without consent of the owner.

In the facts of the present case there are disputes with regard to the title between two private parties. Such disputes are being considered by the civil court in a suit pending between them.

Since the appellant claims to be in settled possession of the property concerned, it would be appropriate to direct the distribution Company to grant electric supply to the appellant at the premises concerned. This grant of electric supply will be wholly without prejudice to the rights and contentions of the parties to the civil suit.

Neither this order nor the grant of electric supply by the distribution Company will be construed to be an acknowledgement of the possession or right, title and interest of the appellant in the property concerned. Neither this order nor the grant of electric supply to the appellant will create any right, title and interest or equity in favour of the appellant in respect of the property, in any manner whatsoever save and except those that the appellant already enjoys despite this order and the supply of electricity at the premises concerned.

Learned advocate appearing for the private respondents submits that his clients should also be allowed to take electric supply at the premises concerned.

Since, the private respondents are yet to apply for electric supply, and at least, no application for such purpose, in respect of the property involved, is demonstrated before this court, we refrain from commenting on the same.

Impugned order dated February 28, 2022 is set aside.

WPA 99 of 2022 is allowed on the above terms.

MAT/33/2022 is disposed of without any order as to costs.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)