

29.11.2023
Sl. No.59
pkd

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

MAT 92 OF 2022

USHA DEVI PRASAD @USHA DEVI
-VS-
THE ADDL. CHIEF SECRETARY AND ORS.

Mr. Pratap Khati
Ms.Bandana Rai ...for appellant.

Mr. Sudipt Kanta Bhowmik
Mr. Anirban Banerjee
Ms. Dipti Bhowmik...for WBSEDCL

Mr. Arun Kumar Sarkar
Mr. Abhijit Sarkar
Ms. Sagarika Sarkar
...for respondent nos. 6 to 10.

The appeal is directed against an order dated July 13, 2022 passed by the learned single Judge in WPA 2565 of 2021.

The writ petitioner applied for electricity supply. It was denied by the distribution Company. Request for water supply was also denied by the authorities. The writ petitioner approached the writ court for such relief.

The private respondent as well as the distribution Company opposed the prayer of the writ petitioner before the learned single Bench. It was contended on behalf of the private respondent that, in a suit for eviction being Title Suit no.1 of 2019 a decree for eviction was passed as against

the writ petitioner/defendant in such suit. Consequently, the writ petitioner was a trespasser at the property concerned. Till such time, the decree was set aside by an appropriate forum, the writ petitioner continued to remain as trespasser and was not entitled to any benefit with regard to the property in question.

Learned advocate appearing for the appellant relies upon AIR 2011 Cal 64 [Abhimanyu Mazumdar vs. Superintending Engineer And Anr.] as also an unreported order of the Bench dated November 22, 2023 passed in MAT 33 of 2022 [Saiyam Goyal vs. State of West Bengal And Ors.] in support of the contention that the appellant, even if treated as a trespasser, is entitled to electric and water supply.

Abhimanyu Mazumdar [supra] was rendered by a special Bench which construed various provisions of the Electricity act, 2003 as well as Works of Licence rules, 2006. It held that a lawful occupier of a premises for the purpose of grant of electricity supply means actual occupier in settled possession.

The ratio of Abhimanyu Mazumdar [supra] was applied in Saiyam Goyal [supra].

The appellant before us is defendant in a suit for eviction. The appellant suffered a decree of eviction. Decree of eviction is under challenge in appeal. Decree is yet to be executed as against the writ petitioner.

The private respondent herein as the plaintiff acknowledged the writ petitioner/defendant in the suit, to be in possession of the property concerned.

Since, the appellant is in possession of the property concerned and is yet to be evicted, on the strength of the ratio of *Abhimanyu Mazumdar [supra]*, the appellant is entitled to electric supply.

In such circumstances, we set aside the impugned order of the learned single Bench and direct the distribution Company to grant electric supply to the appellant within a period of fortnight from date subject to the appellant complying with all formalities and depositing the requisite charges. In the event the distribution Company faces any obstruction in complying with the order, the distribution Company will take police assistance. The local Police Station is directed to ensure that no breach of peace takes place at the locale when the distribution Company grants electric supply to the appellant.

The appellant also applied for water supply. On the parity of the same reasoning, Public Health Engineering Authorities are directed to grant water supply to the appellant. Same direction with regard to obstruction of grant of water supply will apply.

It is made clear that this court did not pronounce on the right, title and interest of the respective private parties in respect of the property in question. This order will not be construed to mean that, any legal right or equity or interest

is being created in favour of the appellant in respect of the property in question in any manner whatsoever.

MAT 92 of 2022 is disposed of accordingly without any order as to costs.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)