

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

213

CWP-26395-2017 (O&M).
Date of Decision: 21.03.2023.

Jahid Hassan

.. Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Ms. Nancy Vashisth, Advocate,
for the petitioner.

Mr. Pankaj Mulwani, DAG, Punjab.

Mr. R.S. Longia, Advocate, for respondents No.2 to 4.

VINOD S. BHARDWAJ, J. (ORAL)

The instant writ petition seeks quashing of the notice dated 15.06.2017 (Annexure P-3) whereby the petitioner has been directed to submit 'No Objection Certificate,' (NOC) from other co-sharers for installation of the electricity connection.

Briefly summarized, the facts of the present case are that the petitioner, who is operating a weighbridge (Dharam Kanta) under the name of Nambardar Computer Dharam Kanta, is joint owner and in exclusive possession of the land on which such weighbridge is being operated. The same is installed in Khewat No.52, Khasra No.15//22 in an area of 1 Kanal and 10 marlas. The petitioner had applied for new electricity connection in his own name and had submitted all the requisite documents, as per the applicable Rules, along with the copy of the revenue record of the land where the electricity meter is proposed to be installed. However, despite receipt of the aforesaid documents, the respondents started delaying the

matter on one pretext or the other. On persistence of the petitioner, he received a letter dated 15.06.2017 (Annexure P-3) issued by respondent No.4 wherein it was acknowledged that the application had been submitted, however, since one Rashid Ahmed and Ali Husan were also co-sharers of the land, hence, the petitioner was called upon to submit No Objection Certificate for release of connection from the other co-sharers. It is averred that the aforesaid requirement has been illegally prescribed and that the same cannot stand in the way of release of the electricity connection in favour of the petitioner who is in exclusive possession of land. The petitioner claims of not having cordial relations with other co-sharers Rashid Ahmed and Ali Hussan and further that he is ready and willing to submit any indemnity/surety bond to ensure that the Electricity Department does not confer any loss on account of installation of the electricity meter. It is further averred that imposition of such conditions amounts to denial of the release of electricity connection to the petitioner and thus affecting his right to carry on his trade and profession and to earn livelihood for himself apart from optimum utilization of his land.

Written statement on behalf of respondents has been filed wherein the receipt of the application for release of electricity connection was duly acknowledged. It was pointed out that the necessity of obtaining 'No Objection Certificate' is mandatory for installation of the electricity connection and that despite repeated requests/reminders by the respondent Corporation, the documents in question had not been furnished delaying the release of connection to the petitioner. It was averred that there was no illegality in asking for the 'No Objection Certificate' from co-sharers for release of the said connection.

Learned counsel appearing on behalf of the petitioner contends that the respondents have failed to refer to any provision of the Electricity Act, 2003 and/or Rules and Guidelines framed thereunder wherein the necessity of 'No Objection Certificate' from the other co-sharers is mandated. In the absence of the above said requirement prescribed under the law, the executing agency cannot demand any unrequired document only to delay release of connection. She further contends that the respondents do not dispute that the petitioner is a joint owner and is in exclusive possession of the said land. The prescribing of the NOC from the other co-sharers as a pre-requisite for release of the electricity connection does not stem from law or serve object of the Statute. She further contends that the petitioner is not having cordial relations with the other co-sharers and asking her to obtain the same before release of connection is actually a complete denial of the electricity connection. She further contends that there has been a paradigm shift from the former requirement under the Electricity Act, 1910 which emphasized ownership of property. The Electricity Act, 2003 requires a person to be in lawful possession of property for seeking release of the electricity. There is no legitimate basis for withholding the issuance of electricity connection especially when the concerns of the respondent Electricity Department can be duly redressed by furnishing of an indemnity bond by the petitioner. She further contends that a similar issue had been considered by this Court in the matter of **Kabul Singh Vs. Punjab State Electricity Board and others in CWP No.17189 of 2008 decided on 17.11.2009** wherein this Court has held as under:-

“Counsel for the petitioner state that prayer for ad-interim injunction was finally determined by the civil Court

and stay sought by respondent No.4 was declined and the civil court has observed as under:-

“Since both plaintiff and Petitioner are co-sharers in the suit property, in case any of the party is able to alienate more than their share or to change the nature of the joint land, then other party will suffer irreparable loss and injury, which cannot be compensated in any manner and it will also lead to the multiplicity of the litigation which in my view can be avoided. As such, plaintiff and Petitioner are restrained from alienating specific portion more than their share and also from changing the nature of the joint land illegally and forcibly except in due course of law. So far as the releasing of electric connection is concerned, this part of the stay application is declined. PSEB authorities are at liberty to issue the electric connection to the Petitioner under their rules. Stay already granted stands modified accordingly. This order of mine shall have no bearings on the merits of the case at the time of final disposal.”

Counsel has further submitted that petitioner had furnished the indemnity bonds as required by the Electricity Board.

Counsel for the Electricity Board has submitted that electricity connections cannot be issued in favour of the petitioner until the co-sharers give no objection.

This submission made by counsel for the respondents cannot be accepted. As is evident, petitioner is in litigation with his co-sharers. Petitioner has furnished the indemnity bonds. The Electricity Board may call upon the petitioner to secure their interest that no harm will be done to electricity wires for installing the tube-well connections and in case any damage is caused, the petitioner will compensate the Electricity Board. Petitioner may also assure the Electricity Board that all charges shall be paid to the Electricity Board. Once this assurance is given to the satisfaction of the Electricity Board, there will be no obstacle in grant of

electricity connections and the tube-well connections shall be installed within two months. With these observations, the present petition is disposed of.”

Learned counsel for the petitioner contends that in the above said case, this Court had directed the respondent Electricity Department to release the electricity connection to the consumer on his furnishing indemnity bond to compensate the Electricity Board in event of any harm being caused to the electricity wires for installing the electricity connection. She further submits that the petitioner is ready and willing to pay all the requisite charges to the respondent-Distribution Licensee.

Learned counsel for the respondents reiterates his submissions noticed above. He, however, could not dispute the judgment in the matter of **Kabul Singh (supra)**.

I have heard learned counsel for the respective parties and have also gone through the documents available on record.

The respondent-Department does not dispute the actual and exclusive physical possession of the petitioner over the land where the weigh bridge has been installed. This Court in the matter of **Mobin Ansari Vs. The Punjab State Power Corporation Limited and others, CWP No.13439-2022, decided on 23.08.2022** has already held that the provisions of Electricity Act, 2003, do not warrant ‘No Objection Certificate’ from the owner as a person who was in rightful possession of the property is also entitled to release of electricity connection. In the said case connection was not being released in favour of tenant on the ground of seeking NOC from the owner. Relevant extract thereof reads as under:-

“15. It would be necessary to refer to the statutory provision. Section 43 of the Electricity Act, 2003 reads thus:-

Section 43. (Duty to supply on request): ---

(1) (Save as otherwise provided in this Act, every distribution] licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply: Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission:

Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.

Explanation.- For the purposes of this sub-section, “application” means the application complete in all respects in the appropriate form, as required by the distribution licensee, along with documents showing payment of necessary charges and other compliances.

(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1):-

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.

(3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default.”

(Emphasis supplied)

16. In order to better understand the legislative intent, it would be necessary to refer to the provision as it stood in the Electricity Act, 1910, prior to the coming into force of the Electricity Act, 2003. The relevant provision contained under Section 12 (6) of the Electricity Act, 1910 is extracted as under:-

“12. Provision as to the opening and breaking up of streets, railways and tramways.

xxx xxx xxx

(6) In this section, “occupier” of any building or land means a person in lawful occupation of that building or land.

17. A comparative reading of both the provisions shows that there is a conscious departure by the Parliament and the word “lawful” specified in the Electricity Act, 1910, has been dropped by the Parliament in the Electricity Act of 2003. The deletion has to be viewed as a conscious act of the Parliament and not just an omission.

18. Occupier has been defined in Section 12 (6) of the Indian Electricity Act, 1910 which reads thus:-

In this Section 'Occupier' of any building or land means a person in lawful occupation of that building or land.”

*19 The issue came up before a Division Bench of Calcutta High Court in the matter of **Santosh Jaiswal Vs. CESC Limited and Ors. in WP No.9794 (W) of 2008, decided on 22.07.2008**, wherein, while interpreting the scope of Section 43 of the Electricity Act in the light of Section 12 (6) of The Indian Electricity Act, 1910, the High Court of Calcutta dealt with the issue as under:-*

10. *At this juncture the decision of a learned Single Judge of this Court reported in 1999 (2) CHN 573: Soumltra Bannerjee v. CESC Limited, deserves attention. While considering what 'lawful occupier' in section 12(6) of the old Act would connote, it has been held as follows:*

"19. If orders are to be passed against the private respondents for the purpose of enabling public respondents to do their duty then a finding has to be reached whether the writ petitioners are lawful occupiers within the meaning of sub-section (6) of section 12 of the Indian Electricity Act, 1910.

20. If that expression is construed in a strict manner and the meaning ascribed to that expression is that the occupier is lawful, by any standards and without any doubt or dispute being there, in regard to the lawful nature of occupation, then and in that event the writ petition must fail. This is simply because no fewer than two civil suits are pending as between the warring parties here.

21. If, however, the expression lawful occupier is given a dilute meaning, in the sense that it is held as including all occupiers who are not in obviously unlawful occupation, although there might be doubts and disputes which have to be resolved later, then and in that event the writ petitioners must succeed.

22. They are not criminals; when they came into possession in the early '90s there was no force applied by them; they have come in through the promoters who were inducted by the owner/landlord; the owner/landlord being in the same premises, were aware that they are coming into occupations at least as alleged by the writ petitioners they have made payments to the promoter for getting their flats, although lately complaints were being filed in the police station the disputes between the petitioners and the respondent No. 4 are purely of a civil nature which might go this way or that and the Writ Court is not the proper Court for making any pronouncement in that respect.

23. This situation is of common occurrence. When civil disputes are pending between two parties it is often the case that one party wants electricity connection and another party, may be the seller, may be the landlord, wishes to stop giving of such connection. In these circumstances, in my opinion, it is most inappropriate to allow any party to utilize the non-giving of essential supplies to the opposite party as a means or tool of putting extraneous pressure in the matter of resolution of civil disputes. Because of this reason I would interpret the words 'lawful occupier' in subsection (6) in a reasonably dilute manner. All occupiers who are peace loving, who have an arguable case which might succeed in the end are entitled to get electricity connection notwithstanding opposition by the opponents. In case they are thrown out they will be thrown out of duly electrified premises and that is not a matter which is likely to affect the substance of the civil dispute or litigation amongst the parties."

13. Provisions of the new Act which are considered relevant are quoted below:

"Section 43(1) - Every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:

Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission; Provided further....."

"Section 2 (70)—Supply, in relation to electricity, means the sale of electricity to a licensee or consumer".

“Section 2 (15)—Consumer means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be”.

“Section 2(4)—Person shall include any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person”.

14. Two broad principles/rules of interpretation are well-accepted, literal and exploring the legislative intent. Ordinarily, the plain grammatical meaning of the legislation in question is discerned and applied. When the plain grammatical meaning leads to absurdity or ambiguity or renders the legislation unintelligible or a literal meaning could not have been intended by the legislature, a departure from literal interpretation may be made and the Courts may be justified in looking for what the legislature intended. However, in the pursuit of understanding a particular legal provision, amendment of law in the garb of interpretation is impermissible. The function of the Court is to find out what is legal and not what is right. Gap in the law has to be remedied by amending the Act and not by filling the gap by a judicial verdict. There may be exceptional situations where unless the gap is filled by judicial verdict the legislation would be rendered unintelligible or absurd and it is only in those exceptional situations that the Court may fill in such gap.

15. Keeping these well-settled principles of law in mind, this Court would proceed to examine the point in issue.

16. The word occupier in section 43(1) of the new Act has not been defined therein. In its decision in Industrial Suppliers (P)

Ltd. v. Union of India, reported in AIR 1980 SC 1858, the Apex Court has held that in the legal sense an occupier is a person in actual possession.

17. Applying the literal rule, there appears to be no doubt that an occupier of a premises meaning thereby a person in possession thereof, in terms of section 43 of the new Act, is entitled to supply of electricity on request being made to the licensee and once electricity is supplied and he bears the charges therefor, he becomes a consumer of electricity. The duty of the licensee is to supply electricity, i.e. sell electricity. However, duty and/or obligation of the licensee to ascertain whether the prospective consumer is in lawful occupation or not is not discerned in the statutory provisions.

18. In some of the decisions referred to supra, the Courts have interpreted the word 'occupier' in section 43 of the new Act to mean 'a lawful occupier'.

19. There can be no doubt that by so interpreting the word 'occupier' in section 43, the Courts have assumed existence of a word therein. Section 12(6) of the old Act provided that occupier of a building or land would mean one in lawful occupation thereof for the purposes mentioned in sub-section (2) thereof. The decisions in Associate Indian (supra), Surajbali Pandey (supra) and Alope Saha (supra) have proceeded on the basis that provisions contained in section 12 of the old Act is a bar for supplying electricity to a prospective consumer unless he proves lawful occupation of the premises at which supply is intended. Without dilating on the point of applicability of section 12 of the old Act to an application for new connection on the face of section 22 thereof, it may be noted that in repealing the old Act and introducing the new Act the legislature has consciously omitted the word 'lawful' while denoting the class of persons entitled to supply of electricity. What the legislature omitted, obviously consciously, could not

have been read into the statute unless of course reading of the statute without such addition would render it absurd or unintelligible. Section 43(1) of the new Act, read as it is, does not produce absurd or unintelligible results.

20. That apart, one cannot lose sight of the fact that a person intending to enjoy electricity though alleged to be a trespasser by the owner of the premises cannot be evicted by the owner except by taking recourse to law. If possession of such trespasser is protected till such time his eviction is ordered according to law, it defies reason as to why an embargo should be created by judicial verdict only in respect of obtaining supply of electricity. None can dispute that electricity is an essential service without which it is difficult to survive. Right to live a meaningful life and with dignity is one of the basic postulates of Article 21 of the Constitution. The right guaranteed under Article 21 is the fundamental of all fundamental rights enshrined in Chapter III of the Constitution. One cannot be deprived of such right only on the basis of an unestablished accusation that he is a trespasser which, as held in Soumitra Banerjee (supra), is commonly used as a tool or means of putting extraneous pressure for resolving civil disputes. Supply of electricity to such alleged trespasser by a licensee would neither prejudice in any manner the owner's right to have an order of eviction passed against him nor would it make any difference so far as status of the alleged trespasser is concerned. The licensee's duty is to sell electricity provided formalities are complied with. There is no justification to hold that lawful occupation of a portion of the premises is a pre-condition for obtaining supply. If the right of an owner to object to electricity being supplied to an occupier of his premises by the licensee is to be conceded on the ground that the occupier has illegally or unauthorisedly taken possession, that would necessarily lead to clothing the licensee with the right to adjudicate the occupier's right to enjoy the

property which this Court is inclined to hold is not the legislative intention. The laws of the country provide for adjudication of such issue by an appropriate forum. If there is any flaw in the statute or the phrasing is defective and the need to mend it arises, it is only the legislature that can amend it. It is the function of the Courts to expound and not to legislate is settled law. Keeping in view the scheme of the new Act, reading the word lawful before the word 'occupier' would amount to legislation by Court which is impermissible.

21. Accordingly, this Court is minded to hold that the decision of the Division Bench in Amarendra Singh (supra) and the decisions of the learned Single Judges in Soumitra Bannerjee (supra) and Moloy Kumar Acharya (supra) are better in point of law and this Court would prefer the views expressed therein to the views expressed by the Hon'ble Division Bench in Anjali Metia (supra) and the decisions of the learned Single Judges in Samsul Haque Mullick (supra), Debadas Biswas (supra) and Gyanendra Nath Shil (supra). It is further held that an applicant for supply of electricity if found to be in actual possession of any portion of a premises at which supply has been prayed is entitled to such supply without any duty being cast on the licensee to ascertain whether such possession is legal or illegal; however, supply would obviously be without prejudice to the owner's right to have an order of eviction against the occupier in a duty constituted proceeding.

22. In the present case, the petitioner has claimed to be an occupier of the premises in question and has sought to substantiate his occupation by annexing telephone bill and voter's identity card.

xxx xxx xxx

24. In view of the foregoing discussion, this Court holds that the petitioner is entitled to supply of electricity. CESC Ltd. is directed to take effective steps for supplying electricity to the

petitioner as early as possible but positively within two weeks from date of compliance of all formalities by him. In the event, any resistance is offered by the private respondent, it shall be open to CESC Ltd. to seek the assistance of the Officer-in-Charge of the local Police Station who shall be bound to provide assistance to secure compliance of this order.”

20. The said issue was also addressed in the matter of **Fashion Proprietor Aswani Kumar Maity Vs. West Bengal Electricity Distribution Co. Ltd. And Ors. reported as AIR 2009 Cal. 87.** The relevant extract of the said judgment is reproduced hereinbelow:-

2. The legal question that arises is as to whether the petitioner is entitled to supply of electricity at the premises despite the dispute and despite it being unclear as to whether the petitioner is in lawful occupation of the premises. A fair concession has, however, been made by the private respondent in suggesting that the writ petitioner is not a rank trespasser in the sense that he entered into possession with the authority of the landlord but has now overstayed the welcome and does not have any authority to remain in possession.

3. The petitioner refers to the change in the law, of the departure from the concept of “lawful occupation” in the Electricity Act of 1910 to the concept of occupier simpliciter in the Electricity Act of 2003. The petitioner suggests that the earlier judgments would have no application upon the change in law and it is a conscious decision of the legislature to drop the word “lawful” from the comparable provision.

xxx xxx xxx

13. Section 43 of the Act makes it incumbent on a licensee to supply electricity to an owner or occupier of any premises. It is, probably, inappropriate to compare Section 43 of the present Act with Section 12 (6) of the previous Act. The definition of “occupier” in Section 12 (6) of the previous Act

was restricted to Section 12 of the said Act. Section 12 of the previous Act operated in a different field and is not comparable with Section 43 of the present Act. Sub-section (6) was introduced into the 1910 Act by an amendment of 1959.

“12 (6) In this section, “occupier” of any building or land means a person in lawful occupation of that building or land.”

14. If the law of the land provides that a person in possession of any premises may not be dispossessed therefrom except in accordance with law, it is implicit that the possession of the person is protected till such time that an appropriate forum holds otherwise and the person is removed from the premises under due process of law. It would then defy reason to suggest that such person can continue to be in possession but be denied an essential utility as electricity which is within the broad sweep of the right to life guaranteed under Article 21 of the Constitution.

15. The writ petition succeeds. The licensee will provide a new electricity connection to the writ petitioner upon the writ petitioner complying with all requisite formalities including paying the relevant charges. The connection will be made available within two weeks from the date of completion of all formalities by the petitioner.”

21. The issue was also examined by the Hon'ble Calcutta High Court in the matter of Molay Kumar Acharya Vs Chairman-cum-Managing Director, W.B. State Electricity Distribution Co. and ors. reported as 2008 AIR (Calcutta) 47. The relevant extract of the aforesaid judgment is reproduced hereinbelow:-

12. Under Section 43 of the Electricity Act 2003, the "Licensee" defined under Section 2(39) of the Act, has the duty to supply electricity on an Application made either by the

"owner" or the "Occupier" of the premises within one month from the date of receipt of such Application.

xxx xxx xxx

14. In retaliation to the aforementioned point argued, Mr. Bidyut Banerjee, learned counsel appearing for the Respondents has submitted that so far as the word "Occupier" is concerned, the same has not been defined under the Electricity Act 2003 but under the Strouds Judicial Dictionary, the word "Occupier" means "the tenant, though absent, is generally speaking the "Occupier" of premises". According to him, the petitioner being not a tenant, cannot therefore be said to be an Occupier. He further submits that the Division Bench judgment cited by Sardar Amjad Ali reported in 2005 (4) CHN 169, cannot apply because the said judgment does not deal with the definition of the word "Occupier" and therefore, it can have no application, in the facts and circumstances of this case.

Mr. Bidyut Banerjee, on the contrary has referred to two judgments of another Hon'ble Single Judge of this Court, one of which has been passed in the case of Samsul Haque Mollick v. CESC Ltd., reported in AIR 2006 Calcutta 73 wherein his Lordship has held that an unlawful occupant of a part of premises is not entitled to get Electricity.

This Court is unable to agree with the submissions of the learned counsel appearing for the Respondents for the reasons stated hereinafter.

In Black's Law Dictionary, the word "Occupier" has been defined as an occupant and an "Occupant", in the same dictionary, has been defined to be a person in possession. The word "Occupier" and "Occupant" as defined in the Blacks Law Dictionary are therefore more relevant to be taken note of, in the facts and circumstances of this case where the newly added

Respondent No.6 has herself gone on record by making the following statement in para 3(e) of her Affidavit-in-opposition which reads as follows :-

"3(e) that after mutation of my name in respect of the premises in question I brought a Title suit being No. 69 of 2007 in the court of learned 2nd Court, Civil Judge (Junior Division) Barasat against the Opposite Party/writ petitioner inter alia for eviction and permanent injunction along with an application under Order 39 Rule 1 and 2 of the Civil Procedure Code for injunction and restraining the petitioner from changing nature and character of the suit property. In the said plaint and in the injunction application under Order 39 Rule 1 and 2 it was stated that petitioner is a licensee under me and I requested the petitioner to quit and vacate the said property but petitioner instead of vacating the said property trying to cause addition/alteration in the suit property and hence the suit and prayed for injunction as aforesaid."

15. In the context of what the Respondent No. 6 has stated in the aforementioned paragraph, the definition given in Blacks Law Dictionary defining the words "Occupier" and "Occupant" become more relevant. They read as follows :-

"Occupier - An occupant; one who is in the enjoyment of a thing.

Occupant - Person in possession, Person having possession rights, who can control what goes on premises. One who has actual use, possession or control of a thing. Redevelopment Authority of Allegheny County v. Stepanik, 26 Pa Cmwith 180, 360 A. 2d 300, 302. One who takes the first possession of a thing of which there is no owner. One who occupies and takes possession. Person who acquires title by occupancy.

Common occupant-See General occupant, below.

General occupant-At common law where a man was tenant pur autre vie, or had an estate granted to himself only (without mentioning his heirs) for the life of another man, and died without alienation during the life of cestui que vie, or him by whose life it was holden, he that could first enter on the land might lawfully retain the possession, so long as cestui que vie lived, by right of occupancy, and was hence termed a "general" or common "Occupant".

Special occupant-A person having a special right to enter upon and occupy lands granted pur autre vie, on the death of the tenant, and during the life of cestui que vie."

16. So far as Strouds Judicial Dictionary is concerned, the definition of the word "Occupier" has also given an illustration vide Entry No. 21, the photocopy whereof was submitted by Mr. Bidyut Banerjee himself and which reads as follows :-

"(21) "Person in actual occupation." Section 71, "Occupier", Section 124, Poor Relief (Ireland) Act, 1838) (1 and 2 Vict. c. 56), see Middleton v. M'Donnell, (1896) 2 IR 228; Immediate Use of Enjoyment."

17. Thus, the illustration given in Strouds Judicial Dictionary is similar to the definition of the word "Occupier" given in the Blacks Law Dictionary.

xxx xxx xxx

25. For the foregoing reasons, the petitioner has the right to claim Electricity as an Occupier under Section 43 of the Electricity Act 2003. Consequently this Court however, makes it very clear that whatever observations have been made in this judgment are only to be construed and interpreted in the context of the petitioner's right to have electricity so long as he remains in possession of the property in question because no

one, in the modern days can survive without Electricity, and therefore, the right to Electricity is also a right to life and liberty in terms of Article 21 of the Constitution of India. This Court therefore makes it once again very clear that the grant of electrical connection to the writ petitioner in view of the Order passed by this Court will not mean to be any adjudication in respect of any of the proceedings or the suit/suits which may be pending inter se between the parties and this Court also makes it clear that the observations made herein in this judgment for the grant of Electricity to the petitioner will not in any way be deemed to affect the rights and contentions of the parties to the proceedings which are pending between them.”

22. Furthermore, the Hon'ble High Court of Gujarat has held in the matter of Yogesh Lakhmanbhai Chovatiya Vs. PGVCL Through the Deputy Engineer, passed in R/Special Civil Application No.6281 of 2021, decided on 02.08.2022 as under:-

“9. Thus, the petitioners, who are the occupiers of the land, cannot be denied the electricity connection only because dispute with regard to decision of the land in question is pending. The Division Bench has observed that the company cannot decide the disputed question of right and title and the ownership or right of occupancy has no nexus with grant of electrical connection to a consumer.

10. Under the circumstances, the respondent Company is directed to supply electricity connection to the petitioners in the premises or in the property, where they are presently staying and occupying the same.”

23. The same would lead to the issue regarding the petitioner being alleged to have claimed as owner of the property in the A&A form. A perusal of the said form which is attached with

the reply shows that both the words i.e. both the options i.e. “lawful owner” as well as “lawful Occupier” have been used and the petitioner had not scored of any. A specific query was also raised in this regard to the counsel representing the PSPCL and he failed to refer to declaration by petitioner that he is owner of the premises. Signature of the petitioner appears on the printed A&A form. The interpretation thus being given by the respondent PSPCL is clearly an afterthought and is not corroborated from the supporting document.

24. A perusal of the bare provision as contained in the Act as well as the precedent shows that the statute only talks of a person to be the “owner of the property” or 'an occupier of the premises' in question. The insertion of the word “lawful” is an offshoot of a phrase used by the respondent – PSPCL in the A and A form. Even though it would amount to a violence with the statute on the part of the respondent – PSPCL in incorporating the term not contained in the Statute itself and insisting upon a word to be part of statute which stands deleted, yet, the issue is being examined since the possession of the petitioner as a licensee is not a subject matter of dispute.

25. “Lawful” is again a term that has not been defined under the Electricity Act, 2003. Consequently, 'lawful' has to be seen in the context of the meaning ordinarily understood or assigned in the ordinary understanding of the general Public.

26. In Black's Law Dictionary, 10th Edition, “lawful” means not contrary to law; permitted or recognized by law.

xxx xxx xxx

28. The word “occupier” even otherwise is assumed in law to be an occupation which otherwise has some legal foundation. Law or Courts of law do not promote degeneration of rule of law and would not be seen promoting capitalization in favour of a wrong doer. The term “Occupier” used in the Electricity

Act, 2003, does not intend to create a right in favour of a rank trespasser. The legislature would not intend to promote breach of law. Besides, every term used in a statute inherently implies it to be lawful. Hence, the interpretation of “occupier” would necessarily mean a possession where a person has been lawfully inducted in a premises. The continuity of subsequent possession by statutory protection or pending judicial adjudication would not be sufficient to hold the possession to be unlawful, under the Electricity Act, 2003 so as to deny release of electricity connection in favour of such occupier, provided though that the application otherwise satisfies to the prescribed regulations. Any stricter approach would confer upon the landlord/owner, an unbridled power to deprive an occupant of the basic amenities that are now integral part of Article 21 of the Constitution of India, 1950. The interpretation assigned to a statutory provision should be done to promote the object of the Act instead of leaving much room for mischief by a disgruntled landlord/owner.”

Hence, the case of co-owner in settled possession is on a better pedestal.

Further, the judgment of **Kabul Singh (supra)** is not disputed by the respondents.

In view of the aforesaid judicial pronouncement of this Court, the present writ petition is disposed of with a direction to the respondents that subject to the petitioner fulfilling the other requirements of the Electricity Act and on his furnishing an indemnity bond to secure the interests of the respondent-Distribution Licensee and that no harm would be done to the property of the respondent-Distribution Licensee in releasing the tubewell connection and an undertaking that in case any damage is caused, the petitioner will compensate the Electricity Board and hold the

electricity Board harmless against any claim, shall consider to release the electricity connection to the petitioner without insisting for submission of prior 'No Objection Certificate' from the co-sharers. The electricity connection shall be released to the petitioner within a period of 30 days on submission of the necessary documents and on fulfilling of the other requisite statutory requirements.

Petition stands disposed of accordingly.

March 21, 2023
raj arora

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No