

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1013 of 2017

1. Shivnath @ Shivnath Paswan, Son of Late Kailash Paswan
2. Birchandra @ Birchandra Paswan, Son of Late Kailash Paswan
3. Dina Paswan @ Dina Nath Paswan, Son of Late Savaki Paswan, All residents of Shiv Nath Motor Garriage, near Brinda Ban Nursing Home Raj Kumar Hotel Gali, Exhibition Road, P.S. Gandhi Maidan, District - Patna.

... .. Petitioner/s

Versus

Sunaina Devi, D/o Late Dwarika Singh and wife of Rajendra Prasad Singh,
Resident of Mahatma Gandhi Nagar, P.S. Patrakar Nagar, District - Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sunil Srivastava, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 25-04-2024

Heard learned counsel for the petitioners on the point of admission and I intend to dispose of the present petition at the stage of admission itself.

2. The instant petition has been filed by the petitioners under Article 227 of the Constitution of India for setting aside the order dated 09.01.2017 passed by the learned Munsif-III, Patna in Eviction Suit No. 51 of 2015 by which the petition dated 25.10.2016 filed by the petitioners for restoring the electric line disconnected by the Electricity Department has been rejected.

3. Learned counsel for the petitioners submits that the respondent has filed the Eviction Suit No. 51 of 2015 in the



court of learned Munsif-III, Patna for eviction of the petitioners from the suit premises. The petitioners appeared and filed their written statement denying the relationship of landlord and tenant and claim of the respondent over the entire suit land mentioned in eviction suit and claimed that a motorcycle garage has been constructed by the petitioners over the western portion of Plot No. 854 about 30 years ago and respondent or his vendor has no concern with the same. The petitioners claimed their title by way of adverse possession against the real owner of Plot No. 854. Learned counsel further submits that petitioner no.3 had taken an electric connection in his name on the said room. During pendency of the eviction suit, on 25.10.2016, the petitioners filed a petition in the eviction suit stating therein that during pendency of the suit respondent with malafide and dishonest intention to harass the petitioners have got disconnected the existing electric line in the suit premises standing in the name of petitioner no.3 by Electricity Department and prayed for restoration of the line. On 01.12.2016, respondent file a rejoinder to the petition filed by the petitioners stating therein that the electricity connection has been disconnected in the light of the order passed in CWJC No. 12610 of 2014. Thereafter, the learned trial court rejected the



petition filed by the petitioners recording a finding that electric line has been disconnected by the order of the High Court in CWJC No. 12610 of 2014.

4. Learned counsel further submits that the learned trial court has not considered the fact that order passed in CWJC No. 12610 of 2014 was without issuing any notice to the petitioner no.3 who was respondent no.4 in the writ application and it was only a direction to the Executive Engineer, Bihar State Power Holding Corporation, Patna to pass appropriate order in accordance with law and in case of refusal of the prayer of the writ petitioner, to pass a speaking order. Learned counsel further submits that respondent filed her representation before the Executive Engineer who, after hearing the parties, passed a cryptic order to disconnect the electricity line of the petitioners having separate meter. Learned counsel further submits that this order passed was passed without considering the fact that matter was *sub-judice* in a competent court of law and electric line should not have been disconnected if there were no dues. Learned counsel relied on the decision of the Orissa High Court in the case of ***Debendra Jha vs. Smt. Minakshi Das*** reported in ***AIR 2005 Orissa 172*** which held that the trial court was justified in directing for restoration of electricity during



pendency of the suit. Learned counsel also relied on another decision of Punjab and Haryana High Court in the case of ***Om Prakash Vs. Balkar Singh and Ors.***, passed in ***CR-1153-2022*** dated 19.02.2022 whereby the Punjab and Haryana High Court ordered for restoration of electricity connection and wherein it was further held that if the petitioner was in possession of the suit property and eviction was yet to be ordered by a competent court of law, electricity being a basic necessity and an integral part of right to life as enshrined under Article 21 of the Constitution of India, the petitioner cannot be deprived of electricity. Thus, the learned counsel submits that learned trial court has failed to consider the contention raised by the petitioners and wrongly rejected the petition dated 25.10.2016.

5. Perused the record.

6. Perusal of record shows the respondent approached this Court by filing CWJC No. 12610 of 2014 with a prayer to direct the respondent nos. 1, 2 and 3, to disconnect the electric supply which has been provided to respondent no.4, who is petitioner no.3 herein. It was contended by the writ petitioner/respondent in the writ that in the premises of the petitioner, without his consent, electric supply was provided to respondent no.4, the petitioner no.3 herein. Thereafter, this



Court directed the petitioner to file a fresh application before respondent no.2, i.e., Executive Engineer, Bihar State Power Holding Corporation along with supportive documents and respondent no.2 was directed to examine the same and pass appropriate order in accordance with law. It was also made clear that even in case of refusal of the prayer of the writ petitioner, respondent no.2 was required to pass speaking order and communicate the same to the petitioner. It appears pursuant thereto the electricity supply of the petitioners was disconnected. Evidently, the electric supply was not disconnected by the respondent herself or by any orders of the learned trial court in Eviction Suit No. 51 of 2015 and if the contention of the petitioners is that the order in writ petition was passed without issuance of notice to them, they are at liberty to approach the Court by filing appropriate application seeking review of the order. Furthermore, if the electric supply was disconnected by the Executive Engineer though at the instance of the respondent, the remedy does not lie before the learned trial court more so when the disconnection was made pursuant to the order passed in CWJC No. 12610 of 2014 and not by any order of the learned trial court or in any proceeding before it. Moreover, admittedly petitioners are not the tenants of the



respondent and they claim their separate title on certain portion of land. If they are having valid documents, they could always assert their right to have electricity connection independent of any proceeding before the learned trial court in eviction suit. At the same time the petitioners are always at liberty to challenge the order of the Executive Engineer before the appropriate forum against disconnection on the strength of their claim and rights.

7. So far as decisions relied upon by the learned counsel for the petitioners are concerned, in the case of ***Om Prakash*** (supra) it was the respondent who disconnected the electricity line while the eviction suit was pending and there was claim of the petitioner that he was a tenant. In the case of ***Debendra Jha*** (supra) since the facts are not clear, it is not possible to relate with the ratio laid down in the case *vis-a-vis* the facts of the present case. Hence, decisions relied upon by the learned counsel for the petitioners is not of any help.

8. In the light of discussion made so far, I do not find any infirmity in the impugned order dated 09.01.2017 passed in Eviction Suit No. 51 of 2015 and the same is affirmed. However, the learned trial court is directed to expedite the matter and dispose of the Eviction Suit No. 51 of 2015 within a



period of six months from the date of receipt/production of a copy of this order so that the rights of the parties are finally decided.

9. With the aforesaid observations and directions, the present petition stands disposed of.

(Arun Kumar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.04.2024
Transmission Date	NA

