

AD-17
Ct No.09
10.04.2024
TN

WPA No. 5690 of 2024

Sk. Eklash Ali
Vs.
The West Bengal State Electricity Distribution
Company Limited and others

Ms. Juin Dutta Chakraborty,
Mr. Bidan Modak

.... for the petitioner

Dr. Madhusudan Saha Roy

.... for the WBSEDCL

- 1.** Affidavit-of-service filed today be kept on record.
- 2.** Learned counsel for the petitioner submits that the petitioner is suffering safety hazards due to overhead electricity line being drawn over the property of the petitioner. The petitioner moved the civil court with a civil suit bearing Title Suit No. 140 of 2009. The learned Civil Judge (Junior Division), Second Court at Uluberia decided the suit *ex parte* on June 16, 2023, thereby passing a decree declaring the right, title, interest and possession of the plaintiff/petitioner in respect of the schedule property and further restraining the defendant therein, that is, the WBSEDCL, from “creating any disturbance in any manner whatsoever interfering with the possession of the plaintiff which includes drawing up of overhead electric connection upon the suit property”.
- 3.** It is submitted that despite the petitioner having approached the WBSEDCL several times for removal of

the overhead electric connection pursuant to the civil court's decree, the WBSEDCL has unlawfully desisted from doing so.

- 4.** Such contention is refuted by learned counsel for the WBSEDCL who contends that the overhead line was existing from long before.
- 5.** By placing particular reliance on the decretal portion, it is submitted that there is no direction on the WBSEDCL to remove the already-existing overhead electricity connection. As such, it is argued that the WBSEDCL did not commit any illegality or violation of the decree of the court in not removing the overhead electric connection.
- 6.** A perusal of the decree cited by the petitioner shows that the WBSEDCL was never directed by the civil court to remove the already-existing overhead electric connection over the property of the petitioner.
- 7.** A decree of a mandatory nature cannot be said to operate retrospectively. In fact, in the present case, there is utter absence of any mandatory direction on the WBSEDCL at all. What the civil court did was to restrain the WBSEDCL from drawing up overhead electric connection upon the suit property which has to be necessarily construed to be a restraint on the WBSEDCL from drawing any further overhead electric connection which was not existent prior to the date of the decree. The decree does not affect in any manner

the pre-existing overhead electric connection over the suit property.

- 8.** In any event, the right, title, interest or possession of the petitioner cannot be, by any stretch of imagination, hampered by the existence of an overhead electricity connection over the property. However, needless to say, the extant Regulations and the Electricity Act, 2003 impose certain obligations on the Distribution Licensee to maintain safety and security standards with regard to their own electricity lines and apparatus. Thus, the purpose of justice would be subserved if the WBSEDCL ensures that all due safety precautions and the appropriate height above the petitioner's property is maintained while operating the said overhead lines.
- 9.** Accordingly, WPA No. 5690 of 2024 is disposed of by directing the WBSEDCL to ensure that the overhead lines running over the property of the petitioner are maintained in good order, keeping in view the minimum overhead distance from the property of the petitioner and other safety and security norms.
- 10.** There will be no order as to costs.
- 11.** Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)