

(2012) 05 CAL CK 0057

Calcutta High Court

Case No: M.A.T. No. 255 of 2012

Manishi Maity

APPELLANT

Vs

West Bengal State Electricity
Distribution Comp. Ltd. and
Others

RESPONDENT

Date of Decision: May 16, 2012

Acts Referred:

- Constitution of India, 1950 - Article 19(I)(e), 21
- Electricity Act, 2003 - Section 176(2)(e), 43, 43(2), 67(2)

Citation: (2012) 4 CALLT 132

Hon'ble Judges: J.N. Patel, C.J; Sambuddha Chakrabarti, J

Bench: Division Bench

Advocate: Sudeep Sanyal and Ms. Lopamudra Moitra, for the Appellant; C.R. Panda for the WBSEDCL and Mr. Rabindranath Mahato and Ms. Joyeeta Chakraborty for the Respondent No. 4, for the Respondent

Judgement

Dr. Sambuddha Chakrabarti, J.

We have decided to dispose of the present appeal with the consent of the parties and by dispensing with all formalities. This is an appeal from an order dated January 09.2012 passed by a learned Single Judge of this Court in W.P. No. 20084 (W) of 2011. The appellant before us was the writ petitioner. By filing the said writ petition the writ petitioner, appellant herein, had. inter alia, prayed for a Writ in the nature of Mandamus commanding the respondents to provide new electric connection to the premises as mentioned in the writ petition. He also prayed for an interim order directing the Electricity Company to provide temporary electric connection to his occupied portion of the premises in the meantime.

2. The case as made out in the writ petition is that he is a permanent resident of a certain portion of the premises in the District of Paschim Medinipur. where he lives

with his family. In the month of July, 2007 he has made an application for a new connection of electricity for domestic purpose at the said portion of the premises. After the initial formalities were completed, the petitioner had received a notice from the West Bengal State Electricity Distribution Company Limited (hereinafter referred to as "Distribution Company") by which he was informed that during inspection of the said premises the company had received an objection from the father of the writ petitioner who figures respondent No. 4 in both the writ petition as well as the present appeal.

3. The petitioner has stated that three of his brothers residing in the said premises have been given new electric connection in the month of July 2011. It is further stated that he is in occupation of certain portion of the said premises as co-owner.

4. The grievance of the petitioner is that in spite of the fact that he was in occupation of certain portion of the said premises, the Distribution Company being a licensee and being under an obligation to supply electricity had violated their statutory obligation in declining to give new electric connection.

5. With these allegations he filed the writ petition, upon which the learned Single Judge has passed the order impugned in the present appeal. It appears from the said order that the private respondent i.e. respondent No. 4 who happens to be the father of the writ petitioner had resisted the supply of new electric connection to the portion of the said premises occupied by the petitioner. The learned Single Judge has recorded the objections of respondent No. 4 that the petitioner was enjoying electricity and that during the pendency of a suit for partition before the learned civil court, it would not be possible to give separate connections to the residents of the premises. Direction of exchanging affidavits between the parties was also there in the order. The learned Single Judge was of the view that it would not be appropriate to pass any mandatory interim order. This refusal to grant interim order has been assailed by the writ petitioner in the present appeal.

6. Mr. Sanyal, learned Advocate appearing on behalf of the appellant submits that his client is in settled possession of the premises in question and as such he is entitled to get electricity connection from the Distribution Company i.e. respondent No. 1 herein, which could never deny the provisions laid down u/s 43 of the Indian Electricity Act. 2003.

7. Mr. Panda, learned Advocate appearing for the Distribution Company has very fairly submitted that the company has no objection in giving electric connection to the portion of the premises occupied by the writ petitioner. In fact the company could have given such connection long back, but for a serious objection raised by the respondent No. 4. Learned Advocate has also not disputed that very recently the Distribution Company has given three new connections to three of the petitioner's brothers.

8. But as before the learned Single Judge so also before us Mr. Mahato. learned Advocate appearing for the father of the writ petitioner, has strongly objected to the above submissions. He has various objections to make:

First a suit for partition is pending in a Civil Court and during pendency of the said suit, no such electric connection may be ordered in his favour.

Secondly the son i.e. the appellant herein is already enjoying the electricity through his father; as such there is no necessity for giving him a fresh new connection.

Thirdly the objection made by Mr. Mahato is that if new electric connection is given to the appellant, the father, respondent No. 4 may face some difficulties and apprehends that he will "lose everything". which, however, have not been spelt out specifically.

9. We have heard the learned counsel for the parties. We have also gone through the materials on record and have given our anxious consideration to the respective cases.

10. We consider that the objection raised by the respondent No. 4 cannot be a ground for refusing to supply new electric connection to the portion of the premises occupied by the petitioner.

11. Section 43 of the Indian Electricity Act. 2003, inter alia, postulates that every distribution licensee is to give supply of electricity to such premises within one month after the receipt of the application. Section 43(2) of the said Act further says that it shall be the duty of the Distribution Licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section 1.

12. It is not in dispute that the writ petitioner/appellant is in occupation of a certain portion of the concerned premises. It is now a trite law that a person in settled possession of any immoveable property cannot be dispossessed otherwise than by due process of law and such person in settled possession can restrain even a lawful owner from disturbing his settled possession otherwise than in due process of law.

13. Mr. Mahato appearing for respondent No. 4 had strongly, contended that the writ petitioner has failed to produce any document that he is a co-owner in respect of the premises in question as he is in a settled possession. In the process what the learned Advocate had overlooked is that the same question has already been answered by a Three Judges" Bench of this Court in the case of [Abhimanyu Mazumdar and Others Vs. The Superintending Engineer and Others etc. etc.](#), wherein the Bench while delivering the judgment had taken a view that to construe the word lawful" as appearing in the Works of Licensees Rule, 2006, made u/s 176(2)(e) read with section 67(2) of the Indian Electricity Act. 2003 as "having perfect legal title to possess" would lead to absurdity in implementing the object of the Act and the Rules. In that event at every stage, the licensee would face problem in

giving electricity whenever any dispute as to the title of a person to remain in possession would be raised by any other person claiming to be the owner having lawful title over the property in question and the licensee would be required to wait until such a dispute is resolved by a competent Court of Law in a protracted litigation. This is exactly what the respondent No. 4 before us wants to do and this is exactly what the Special Bench had prohibited, the Court from allowing him. The Special Bench further held "that a trespasser in settled possession, if not evicted in accordance with law, should be entitled to get electricity with the aid of section 43 of the Indian Electricity Act, 2003 on compliance of the terms of supply as provided under the law.

14. The present petitioner is undoubtedly in a far better position than that of a trespasser and admittedly the petitioner is residing in the premises and his possession is not in dispute. Jurisprudence has theoretically interpreted the concept of possession in a manner so as to protect the possessor's right. The basic right that carries an act of possession is most certainly to defend his right against the whole world including the real owner who has to establish it in a Court of Law and once his right to remain in possession is accepted, his human rights for the basic amenities of life cannot be denied. Life in its truest sense means a man must be provided with all facilities for living with dignity and with the basic amenities of the modern society and what Article 21 of the Constitution of India specifically seeks to ensure is not just bare survival or existence. The State is required to create objective situation rendering a citizen's life worth living like a human being with all the dignities.

15. The judgment in the case of *Abhimanyu (supra)* which permitted the occupiers to enjoy the electricity was in fact a fulfillment of the derived fundamental right under Article 21 of the Constitution of India. The scope of which in very recent time through judicial pronouncements have been immensely widened. The positive change in the realm of law has taken place over a long period of time and today the Court cannot put a seal of approval on the objections raised by an unwilling father to the electric connection to be provided to his son. If right of residence comes within the ambit of Article 21 of the Constitution of India and a citizen has a right to reside and settle in any portion of India as provided under Article 19(I)(e) of the Constitution, he has equally a right to enjoy the property in a most meaningful manner.

16. In the case of [Chameli Singh and others etc. Vs. State of U.P. and another](#), the Supreme Court had spelt out what was meant by "right to shelter" and had included electricity amongst others as a part of that right.

17. In such view of the matter, it has now become settled that even if a person lacks title in respect of any land or premises, he still cannot be deprived of electric connection provided he is in settled possession of the premises. An unauthorized occupier may most certainly be evicted by a person having better title by due process of law, but so long as he is in occupation of the premises his right to get

electricity cannot be denied by the electricity authorities.

18. Thus all the points raised by the learned advocate appearing on behalf of respondent No. 4 fail and none of them can be reckoned to be any ground for denying the electric connection to the petitioner.

19. We are afraid, the learned Single Judge had failed to address the problem from the proper perspective and committed a serious error in not directing the authorities to provide new connection.

20. The learned Single Judge also had failed to appreciate that pendency of a suit for partition between the brothers cannot be a ground for not directing the concerned authorities to provide electric connection. This is exactly the Special Bench has tried to protect a person in settled possession from a protracted litigation. The learned Single Judge while observing that it would not be appropriate to pass any mandatory interim order, had clearly erred in not appreciating that the electricity is a basic amenity of every life, which cannot be made to wait till the disposal of any litigation between the parties provided the petitioner is otherwise entitled to it in accordance with law.

21. Pursuant to the order passed by the learned Single Judge directing the respondents to file affidavits, only the Distribution Company has filed its affidavit-in-opposition to the writ petition and served the same upon the learned advocate for the petitioner. The petitioner has also used the affidavit-in-reply to the same. But the respondent No. 4 who has so stubbornly objected to the petitioner's case has in fact not filed any affidavit-in-opposition to the writ petition in spite of such direction.

22. Thus, we are allowing the appeal by directing the respondent No. 1 the Distribution Company, to provide electric connection to the portion of the premises in occupation of the appellant after compliance of all formalities and in accordance with law within a period of four weeks from date.

23. We make it clear that if the Distribution Company faces any law and order problem or any obstruction from the side of the respondents or from any person in carrying out of the order, they shall be at liberty to carry out our order with the police assistance, the cost of which shall be borne by the appellant.

24. We further make it clear that this direction upon the Distribution Company i.e. respondent No. 1 to provide electric connection to the appellant shall not create any equity in favour of the appellant in the suit for partition pending in the Civil Court as regards drawal of electric line, his possession in the specific part of the premises or the fixation of electric meter.

25. Since we have discussed all the issues involved in the writ petition, there is no necessity in keeping the writ petition alive. The writ petition is also disposed of accordingly.

26. We consider that this appeal in the facts of the case should be allowed with costs, which is quantified as Rs. 2.500/- which is to be paid by the respondent No. 4 to the appellant within a period of four weeks from date. In default, the appellant will be at liberty to recover the same in accordance with law.

Photostat certified copy of this order, if applied for, be supplied on priority basis.

J. N. Patel, C.J.

I agree.