

(2007) 10 CAL CK 0026

Calcutta High Court

Case No: Writ Petition No. 148 of 2007

Gyananendranath Shil

APPELLANT

Vs

Superintending Engineer and
Others

RESPONDENT

Date of Decision: Oct. 9, 2007

Citation: AIR 2008 Cal 19 : (2008) 2 CHN 219

Hon'ble Judges: K.J. Sengupta, J

Bench: Single Bench

Advocate: K. Jayapal, for the Appellant; S.K. Mandal, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

K.J. Sengupta, J.

This writ petition is directed against an order passed by the Superintending Engineer, Electricity Department, A & N Administration, who in compliance of the order passed by the learned Single Judge of this Court dated 5-3-2007 has decided not to give connection of the domestic electric supply line to the premises of the petitioner.

2. It is appropriate to record the relevant portion of the direction given by the learned single Judge earlier:

Regarding electric connection, this Court directs the Superintending Engineer, Electricity Department to take effective steps for providing the petitioners house with electricity since this Court is satisfied that the title suit filed by the neighbours of the petitioners is not in respect of the property in question. In the event the respondent No. 4 is of the opinion that the electric connection cannot be given to the petitioners without hearing the neighbours, he shall be at liberty to give notice to the neighbours and hear them before effecting such connection. If for any reason supply cannot be given, he shall pass a reasoned order.

3. The petitioner is asking for electric connection to the building erected and/or situated at plot No. 144. The civil suit relates to the land bearing survey No. 142 in respect of which no electric connection is asked for in this matter.

4. It is, thus, clear that the learned Trial Judge gave liberty to the Superintending Engineer to take decision with reason if the electric connection could not be given. The Engineer concerned has called for the report from the concerned Tehsildar, who reported that there is no building and structure constructed on the said plot of land, however, such facts are denied and disputed by the petitioner. In any view of the matter, admittedly, the petitioner is still an encroacher of the subject plot of land bearing survey No. 144 and an application for regularization of such encroachment has been made. No decision has been taken as yet. The engineer found that since the petitioner is not a lawful occupier, not to speak of owner, of the said plot of land bearing survey No. 144, the electric connection cannot be given in view of the notification dated 9-8-1985 which speaks about the eligibility of getting connection either by the owner or by the lawful occupier.

5. The engineer has noted every such things in detail. The order is well reasoned and worded one. It could be possible to take different view but the writ Court cannot substitute its own views.

6. Learned Counsel for the petitioner contends that the notification dated 9-8-1985 was issued in the context of the provisions of Electricity Act, 1910 which has been repealed substituting new Electricity Act of 2003 and the entitlement of a person for getting electric connection is only "occupation without any prefix or suffix.

7. In my view, "occupier" of any premises means must be a lawful occupier on the date seeking electric connection, for a trespasser cannot get statutory amenities or facilities. Therefore, there cannot be any difference between the expression "lawful occupier" as mentioned in the earlier Act of 1910 and word "occupier" in the present Act of 2003. When authority concerned earlier prescribed lawful occupier, there is no reason to think in view of change of law, trespasser is to be given lawful right.

Therefore, I. think the Superintending Engineer has on the existing fact prevailing today, taken a right decision.

8. Since the application for regularization of this plot of land made by the writ petitioner is pending for taking final decision, this should be completed as early as possible, which I am told that direction has been given by the writ Court earlier to take a decision, which has not been done as yet.

9. The moment the decision is taken regularizing the petitioner's land, the order of the Superintending Engineer will lose its force automatically and immediately thereafter, electric connection shall be given to the petitioner. Such action may be taken within a period of fortnight from the date of communication of the decision of regularization.

10. writ petition is disposed of with me above observation. There will be no order as to costs.

Urgent xerox certified copy of this order, if applied for, be given to the learned Counsel for the parties forthwith upon compliance of usual formalities.