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(2007) 08 CAL CK 0060

Calcutta High Court

Case No: Writ Petition No. 2455 (W) of 2005

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| Debadas Biswas | APPELLANT |
| Vs | |
| West Bengal State Electricity Board and Others | RESPONDENT |

Date of Decision: Aug. 7, 2007

Acts Referred:

- Electricity Act, 2003 - Section 185, 43, 53
- Electricity Rules, 1956 - Rule 2

Citation: AIR 2008 Cal 29 : (2008) 1 ILR (Cal) 8

Hon'ble Judges: Jayanta Kumar Biswas, J

Bench: Single Bench

Advocate: Bidyut Kumar Banerjee and Shila Sarkar, for the Appellant;Sujit Sankar Koley and Sunil Kumar Roy, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Jayanta Kumar Biswas, J.
By this writ petition dated February 4th, 2005 the petitioner prayed for a mandamus directing the first and second respondents (the second respondent is an officer of the first respondent) to supply him electricity at his residence.

2. On November 29th, 2004 the petitioner applied for supply of electricity. His application was to be considered by the first respondent in terms of the provisions in Section 43 of the Electricity Act, 2003. By a letter dated January 13th, 2005 the second respondent informed him that in the face of objection by one Bijoli Manna and for his failure to establish that he was a lawful occupier of the premises in question, there was no scope to give him new connection. Feeling aggrieved he took out the writ petition, which was disposed of by an order dated March 14th, 2005 directing the first respondent to give the connection. Consequently the connection

was given. The third, fourth and fifth respondents (Anjali Metia, Bijeli Manna both sisters of the petitioner, and Atashi Rani Biswas the petitioner''s mother) questioned the order dated March 14th, 2005 by filing an appeal, which was allowed by the Division Bench by order dated August 9th, 2006. The order dated March 14th, 2005 was set aside and writ petition was remitted for fresh hearing. As a result, connection given by the first respondent was snapped.

3. The short question that has arisen in the case is whether as an occupier of a portion of the premises at North Tarapukur, B. C. Sen Road, P. O. Agarpara, P.S. Khardah, Dist. North 224 Parganas the petitioner is entitled to ask the first respondent to supply him electricity in terms of the provisions in Section 43 of the Electricity Act, 2003, There is no dispute that if the petitioner is a lawful occupier, then he is entitled to call upon the first respondent to supply him electricity. The dispute, however, is regarding the question whether the petitioner is a lawful occupier of any portion of the premises.

4. In para 7 of the writ petition the petitioner has claimed that he was all along residing in the premises with his parents, and that even at the date of filing the writ petition he was residing there. By filing an opposition the third, fourth and fifth respondents have said that the petitioner, with his family, was residing in a rented house, and not with his parents; and that after the death of his father he forcibly entered into the premises, and took possession of certain portion thereof. By filing reply the petitioner has denied the allegation made in the opposition. It is therefore clear from the pleadings of the parties that at the date the petitioner filed the writ petition he was an occupier of certain portion of the premises in question.

5. Counsel for the petitioner has argued that once it was found that the petitioner sought supply of electricity as an occupier of the premises, even in the face of objection by the third, fourth and fifth respondents, the first respondent was under a statutory obligation to supply him electricity. In support of his contention he has relied on Associated Indam Mechanical Pvt. Ltd. and Anr. v. CESC and Ors. Cal. LT. 1989 (1) HC 187 and Nemai Hait v. CESC Ltd. and Anr. 2001 (2) CHN 71. He has also relied on Section 185 of the Electricity Act, 2003 in support his contention that since necessary regulations u/s 53 have not been made, the Indian Electricity Rules, 1956 shall be deemed to be in force.

6. His further contention is that in the Indian Electricity Rules, 1956, Rule 2(af), the expression ''occupier'' has been defined to mean the owner or person in occupation of the premises where energy is used or proposed to be used. To show that mere occupation is sufficient to entitle the petitioner to get supply of electricity, he has referred me to certain comments made in Naushir Bharucha''s Guide to the Electricity Laws, 4th edition, p. 1450. There the author commented that mere physical occupation of the premises would be good enough to supply electricity, unless patent facts indicate an occupant to be a trespasser. Counsel for third, fourth and fifth respondents has argued that as was held by me in Samsul Haque Mollick

Vs. CESC Ltd. and Others, while a lawful occupier of a premises is entitled to call upon a licensee to supply him electricity in terms of Section 43 of the Electricity Act, 2003, an unlawful occupant of a part of the premises, such as the petitioner in the present case, is not entitled to call upon the licensee to supply him electricity.

7. I am unable to agree with counsel for the petitioner that mere possession of a portion of the premises by the petitioner was sufficient to make him entitled to call upon the first respondent to supply him electricity in terms of the provisions in Section 43 of the Electricity Act, 2003. In view of what was held in Samsul Haque Mollick Vs. CESC Ltd. and Others, , I hold that unless the petitioner establishes that he is a lawful occupant of a portion of the premises in question, he is not entitled to call upon the first respondent to supply him electricity in the discharge of its statutory obligation cast by the provisions in Section 43.

8. In Associated Indam order was made for supply of electricity on the peculiar facts of that case after holding that an unlawful occupier would not be entitled to claim supply of electricity as a matter of right. The authorities were directed to supply electricity during pendency of proceedings before the Civil Court that was to decide the right of the petitioner therein to occupy any portion of the premises according to law. Relief granted in that case, on the facts thereof, cannot, in my view, be considered to be binding precedent. In Namai Hait once again order was made directing the licensee to supply electricity noticing that the respondents in the writ petition concerned did not come up with a case that the petitioner therein forced himself into the premises concerned or that he was a criminal or a trespasser or an outlaw.

9. It is therefore clear that in the face of the allegation that the petitioner forced himself into the premises, in my view, it cannot be held, in the absence of proper adjudication on the basis of evidence adduced by the parties and recorded by the competent Civil Court, that the petitioner is not an unlawful occupant of a portion of the premises. In my view, the definition of the expression ''occupier'' given in the rules, I have been referred to, cannot improve the situation. For getting supply of electricity at the premises, the petitioner has to establish first that he is a lawful occupier of any portion of the premises. 1 am unable to come to a finding, in so far as that question is concerned. Highly disputed questions of fact have arisen, and in my view, the Civil Court is the only appropriate forum for their adjudication and determination.

10. For these reasons, I dismiss the writ petition making it clear that nothing in this order shall prevent the petitioner from approaching the appropriate Civil Court for establishing his case that he is a lawful occupier of any portion of the premises, and hence he is entitled to call upon the first respondent to supply him electricity. Needless to say that if appropriate proceedings are initiated before the competent Civil Court, then such Court shall give appropriate decision in the case. There shall be no order for costs in the case.

Urgent certified xerox copy of this order, if applied for, shall be supplied to the parties within three days from the date of receipt of the file by the section concerned.