

(2007) 01 CAL CK 0024**Calcutta High Court****Case No:** Writ Petition No. 2351 (W) of 2006

Amarendra Singh

APPELLANT

Vs

CESC Limited and Others

RESPONDENT

Date of Decision: Jan. 9, 2007**Acts Referred:**

- Electricity Act, 2003 - Section 43

Citation: AIR 2007 Cal 108**Hon'ble Judges:** Jayanta Kumar Biswas, J**Bench:** Single Bench**Advocate:** Kishore Dutt and Upendra Roy, for the Appellant; Soumik Mukherjee, Saptangshu Basu and Bimalendu Das for (Nos. 11 to 14) and Sanjib Kumar Mal and D. Mukherjee, (for No. 15), for the Respondent**Final Decision:** Dismissed**Judgement**

@JUDGMENTTAG-ORDER

Jayanta Kumar Biswas, J.

The writ petitioner is alleging that though he was entitled to get new electricity connection, CESC failed and neglected to give connection, even after all formalities in terms of directions of CESC, were complied with by him, and he signified his willingness to pay the requisite charges. Counsel for CESC submits that through the existing line supply cannot be given to anyone in the premises in question. He says that supply, if is to be given, can be given only through a new connection. The question is whether CESC has failed to discharge its statutory duty cast by provisions in Section 43 of the Electricity Act, 2003.

2. The eleventh to fourteenth respondents, claiming to be the owners of the property, are contesting the case by filing an opposition. They have categorically denied claim of the petitioner that he is a Thika tenant in the premises. They have said that the petitioner is none but a rank trespasser and hence he would not be

entitled to get any electric supply. Their counsel relies on my decision in [Samsul Haque Mollick Vs. CESC Ltd. and Others](#) . The fifteenth respondent claiming to be the tenant with respect to the portion of the premises in question, is also contesting the case by filing an opposition. His specific case is that the petitioner has made a false claim that in the capacity of a Thika tenant he is in possession of the portion in question. His further case is that he is the tenant of portion having actual physical possession thereof.

3. There is absolutely nothing to support the claim of the petitioner that he is a Thika tenant with respect to the portion of the premises in question. No order has been made by the Controller holding that the petitioner is a Thika tenant as claimed by him. There is nothing either to show that he is in actual physical possession of the portion in question. Simply because the eleventh to fourteenth respondents, in their opposition, alleged that he is none but rank trespasser, a presumption cannot be drawn that he is in actual physical possession of the portion of the premises particularly when the fifteenth respondent has stated on oath that as tenant he is in actual physical possession of the portion in question. The question of possession cannot be decided by me sitting in the writ Court.

4. This being the position, I am unable to agree with counsel that even if the petitioner is a rank trespasser in the portion of the premises in question, in view of provisions in Section 43 of the Electricity Act, 2003, he would be entitled to get supply of electricity. In this context I say that if the petitioner is not an occupier of the portion in question that is to say if he did not lawfully enter into the portion in question, then he is not entitled to get supply of electricity, since an unauthorised occupant is not entitled to ask for supply of electricity as an occupier within the meaning of Section 43. That was exactly what I held in the case relied on by counsel for the eleventh to fourteenth respondents. For getting benefit of provisions in Section 43, the petitioner is to establish, by approaching the appropriate forum that he is in actual physical possession of the portion of the premises in question, and that he lawfully entered into that.

5. For these reasons I dismiss writ petition. There shall be no order for costs in it.

6. 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.