

**(2006) 08 CAL CK 0059**

**Calcutta High Court**

**Case No:** M.A.T. 1630 of 2005

Anjali Metia and Others

APPELLANT

Vs

West Bengal State Electricity  
Board and Others

RESPONDENT

**Date of Decision:** Aug. 9, 2006

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 144(2)
- Electricity Act, 2003 - Section 43

**Citation:** (2007) 1 CALLT 219 : (2006) 4 CHN 433 : 111 CWN 230

**Hon'ble Judges:** V.S. Sirpurkar, C.J; Patherya, J

**Bench:** Division Bench

**Advocate:** Subhas Chandra, Sayaneb Sengupta and Sumit Roy, for the Appellant; S.S. Koley, for respondent Nos. 1 and 2, Pankaj Halder and Manotosh Chakrabarti, for the Respondent

**Final Decision:** Allowed

### **Judgement**

V.S. Sirpurkar, C.J.

This appeal is against an order by the learned Single Judge who, while disposing of the writ petition directed the West Bengal State Electricity Board to supply the electricity at the portion of the premises under the occupation of the petitioner. The petitioner had come up before this Court on the ground that though he had applied for the electric connection in respect of the house which he had occupied, he was not being granted that connection by the Board.

2. The learned Judge has simply directed the Board to supply the connection and has made further observation that the supply of electricity to the petitioner would not create any right in favour of the petitioner nor would it be to the prejudice and interest of the private respondents. It is to be seen that in this writ petition, the petitioner's mother and two married sisters are joined as respondents because they

had raised an objection to the grant of electricity connection.

3. The petitioner is the son of one Aditya Ranjan Biswas. He has one brother and two married sisters, viz., Bijoli Manna and Anjali Metia. His mother Atashi Rani Biswas is still living. What transpires from the affidavit-in-opposition which was filed before the learned Judge as also from the other documents is that the father of the petitioner Aditya Ranjan Biswas died and before that he was living in a house which was constructed somewhere in the year 1961. The petitioner claimed that this house was constructed from the income of his father, but his father showed the same to be in the name of his mother. In short his plea was that his mother was a benamidar. He contended that before the death of his father he had left the house for four years which fact he has stated in his letter to the Board. He further pleaded that after the death of the father he came back to the house. Now it transpires from the fact pleaded in the petition and also in the affidavit-in-opposition that the mother had gifted this house in favour of her two daughters, the respondents herein and that throughout it is only those two married sisters who looked after the mother. The mother seems to have gifted this house on 6th September, 1994 after the death of the father of the petitioner and, thereafter, the two sisters and the mother were residing in the house. There is a report on the record made to the police that after the death of the father while the three ladies were residing, the petitioner forced his entry into the house and started occupying the portion of the house. On that basis there appears to be an entry in the general diary of the police station. There also appears on record an order dated 7th April, 2005 passed by the Executive Magistrate, Barrackpore in M.P. No. 888 of 2005 which proceeding appears to have been instituted on the basis of the petition filed by Smt. Bijoli Manna, one of the appellants herein and the respondent in the writ petition. By this order the Executive Magistrate seems to have exercised his powers u/s 144(2) of the Code of Criminal Procedure and ordered status quo. It appears that the grant of electric connection was objected to by the private respondents as the existing meter to the concerned house was transferred in the name of Smt. Bijoli Manna. It also appears further that earlier this connection was in the name of the mother and with her consent the connection was transferred. It also further transpires that Smt. Bijoli Manna had paid all the electricity charges including the arrears and, thereafter, had applied to the Board for temporary disconnection. When the petitioner applied in 2004 for fresh connection, the house did not have any supply of electricity as on account of the request made by Smt. Bijoli Manna, the meter supply was disconnected.

4. It also appears that the West Bengal State Electricity Board by its communication dated 24th December, 2004 had sought from the proof of the nature of the possession and/or right of the petitioner. In fact during the debate the learned Counsel for the West Bengal State Electricity Board produced before us xerox copy of the letter dated 24th December, 2004 where clear instructions have been given to the Station Manager, Agarpara Sector, 24-Parganas (North) not to effect any service

connection to the property in the name of Sri Debdas Biswas.

5. As if all this is not sufficient, there are documents on records to suggest that Shri Debdas Biswas filed a title suit being T.S. No. 303 of 1995 in the Court of the 4th Munsif at Sealdah. This was a title suit claiming 1/5th portion of the house on the ground that the gift deed made by the mother was fraudulent document and the mother in fact was not the owner and she was a benamidar in respect of the house. This suit proceeded ex parte against the defendants, i.e. the mother and the two sisters. However, that was dismissed by the learned Munsif on the ground that such a suit was not tenable as the plea of benami transaction could not be raised in a suit which plea was the basis of the claim of the petitioner. The petitioner claimed that the mother had no right as she was a benamidar and, therefore, after the demise of his father he had inherited 1/5th portion as per the dayabhaga law.

6. In his writ petition very significantly the petitioner has mentioned in paragraph 9 as under:

That after the death of the petitioner's father, Respondent No. 3 started to stay in the aforesaid premises. Previously also Anjali Metia used to stay at that premises to look after her old father and mother as because Debdas refuse to maintain his parents.

It is, therefore, clear that the petitioner has strained relations with his mother and sister.

7. Unfortunately all these facts have not been referred to by the learned Judge in his order. The learned Judge seems to have proceeded on the basis that the petitioner was occupying the premises and, therefore, he was entitled to have the electricity connection perhaps on the basis of Section 43 of the Electricity Act, 2003. Even without discussing a single fact or a single document, the learned Judge has merely given the direction to the West Bengal State Electricity Board to start the electric supply by granting the application filed by the petitioner.

8. We are not, therefore, in a position to agree and uphold the judgment of the learned Single Judge. The learned Single Judge was bound to discuss and decide as to whether the petitioner could be in law termed to be an occupier within the meaning of Section 43. A person cannot be allowed to take advantage of his own wrong. Therefore, the person who is a trespasser cannot by continuing his trespass claim the character of an occupier, and as such claim the rightful supply of electricity u/s 43 of the Electricity Act. However, this question was not even addressed by the learned Judge. As if all this is not sufficient, the learned Judge should also have noted that the title suit filed by the petitioner for declaration of his 1/5<sup>th</sup> right in the property is dismissed and the appeal against the same is not pending. It is only a condonation of delay application which seems to have been pending before the Appellate Court and for the reasons known only to the parties and the Court, that application still remains undecided in spite of elapse of four years of its filing.

Therefore, at least *prima facie* the petitioner did not produce any material either before the Board or before the learned Judge justifying his lawful occupation of the premises.

9. We are, therefore, constrained to set aside the judgment and remand the matter back to the learned Single Judge. Needless to mention that because of the setting aside of the judgment there will be no order on the Board to supply the electricity. The learned Judge to whom the matter is remanded is requested to dispose of the matter as early as possible and not beyond six months. The Board as also the parties would be allowed to file their affidavit-in-opposition and affidavit-in-reply before the learned Single Judge.

10. With this, the appeal is allowed but under the circumstances we do not inflict any cost.

11. Xerox certified copy of this order, if applied for, be given to the learned Counsel for the parties.

Patherya, J.

12. I agree.