

Calcutta High Court

HON'BLE JUDGE(S): **RABINDRANATH SAMANTA , J**

HASI BAIDYA V. SUPERINTENDING ENGINEER

WPA - 793 of 2022, decided on 25/11/2022

Electricity Act (36 of 2003) , 5.43— Electricity connection - To encroacher - Applicant was encroaching upon government land, she built a house there and since she resided there with her family members, she urgently needs electricity - Enjoyment of electricity would not confer any right or equity in favour of trespasser in occupation to defeat title of the lawful owner - Authority directed to provide electrical connection to applicant if she was in possession of premises - Applicant would be entitled to enjoyment of electricity until she is dispossessed through due process of the law.

AIR 2011 Cal 64-Followed.

(Para 9)

Case Referred :

AIR 2011 Cal 64 (Followed)

Chronological Paras

Para No.(2, 5)

Name of Advocates

A. Venkatesh for Petitioner; T. Lall, Rakesh Kumar for Respondent.

ORDER:-

1. The writ petitioner is an encroacher of a Government land as particularized in the writ petition and she has constructed a house thereon. After construction of the house she started residing there along with her family members. The writ petitioner submitted an application being No.8652 dated 20.11.2022 supported by an affidavit to the respondent authorities praying for providing electricity to her house. But they declined to provide electricity to her. The respondent authorities informed the petitioner that the Departmental Technical Committee stopped providing electric connection to those persons who encroached Government land. The petitioner submits that as an occupier of the land she is entitled to get electricity connection.

2. Learned Counsel appearing for the petitioner by referring to a judgement dated 11th February, 2011 passed by the Larger Bench of Hon'ble High Court, Calcutta in WP No.423 of 2010 (**AIR 2011 Cal 64**) with other writ petitions submits that an encroacher of a Government land is entitled to get electricity connection. Placing reliance on the decision learned Counsel emphasizes that the respondents authorities be directed to provide electricity connection to the petitioner immediately.
3. Learned Lawyer appearing for the respondents opposes the prayer of the petitioner.
 4. It is the case of the petitioner that she is an encroacher of a Government land and she constructed house thereon. Because of her residing there with her family members she urgently needs electricity connection in her house.
 5. In the judgement dated 11th February, 2011 rendered by the Larger Bench of our High Court in WP No.423 of 2010 with other Writ Petitions (Abhimanyu Mazumdar v. The Superintending Engineer and another) (**AIR 2011 Cal 64**) it has been held as under:-

"Since all the lands in these Islands belong to the Union of India, the latter is not required to file a civil suit for eviction of a trespasser and the trespassers can be evicted by taking recourse to the Regulation of 1966. However, so long such a trespasser in settled possession is not so evicted, he should be entitled to get electricity with the aid of Section 43 of the Electricity Act on compliance of the terms of supply as provided under law. It is needless to mention that the enjoyment of such electricity will not confer any right or equity in favour of the trespasser in occupation to defeat the title of the lawful owner."
 6. With the aforesaid observation the Larger Bench of the Hon'ble High Court allowed the writ petitions with the following direction:-

"The respondents to give electricity to the writ petitioners if the applicant is found to be in settled possession of the premises in question and they will be entitled to the enjoyment of the electricity so long they are not dispossessed by due process of law on compliance of all other formalities required under the Act."
 7. The aforesaid decision of the Hon'ble High Court neatly applies to the facts of the Writ Petition on hand.
8. Accordingly, the Writ Petition is disposed of by passing the following direction:-
 9. The respondents are directed to give electricity connection to the writ petitioner within three weeks from the date of communication of the order if the writ petitioner is found to be in settled possession of the premises in question and she will

be entitled to the enjoyment of the electricity so long as she is not dispossessed by due process of law on compliance of all other formalities required under the Act.

10. Be it noted that since this Court has not invited Affidavit-in-opposition from the respondents the allegations/averments as made in the Writ Petition shall be deemed to have been denied by the respondents.

11. No order as to cost.

12. Parties may act on Server Copy of the order.

13. However, Certified Copy of the order, if applied for by the parties, be given to the parties complying with all the requisite formalities.

Petition Allowed