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SooperKanoon Citation : sooperkanoon.com/470450

Court : Allahabad

Decided On : Nov-02-1988

Reported in : AIR1989All171

Judge : Ravi S. Dhavan, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : Civil Misc. Writ Petn. No. 22834 of 1987

Appellant : Laxmi NaraIn Pathak and ors.

Respondent : Additional District Judge, Gyanpur, Varanasi and ors.

Advocate for Def. : Sunil Singh, Adv.

Advocate for Pet/Ap. : Satya Prakash, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Ravi S. Dhavan, J.

1. In the district of Varanasi is a village Jhakao within tahsil Gyanpur. The petitioners Messrs Laxmi Narain Pathak, Nagendra Pathak and Mahendra Pathak from this village desired an electric connection from the U.P. State Electricity Board, Varanasi (hereinafter referred to as the Board). The Board was about to grant an electricity connection to the petitioners. The pole from which electricity connection was to be strung had been pitched. At this stage respondents Nos. 3 and 4 Messrs Shesh Dhar Pathak and Gyan Dutt Pathak applied for an injunction before the Munsif, Gyanpur by filing a suit No. 119 of 1984; Shesh Dhar Pathak and another v. Laxmi Narain and others seeking a permanent injunction along with an ad interim order that the petitioners, defendants before the trial court, be restrained from taking electricity wires straight from the pole to their house. An ad interim injunction was granted by the trial court and the electricity connection sought by the petitioners was, thus, stalled, Today four years have passed and the petitioners have yet to receive electricity, but cannot, because of the injunction granted in the suit. The injunction was granted by the trial court on 23 May 1984. The petitioners, as defendants, filed a Miscellaneous Appeal No. 41 of 1984 before the Additional District Judge, Gyanpur Varanasi. The injunction of the trial court was retained and the appeal of the petitioners was dismissed by the Additional District Judge, Gyanpur.

2. The respondents, aforesaid, sought the injunction on a claim that the track of landsouth of their shed and north of the house of Badri Prasad belonged to them or they were possessed of it. This is the track of land between the respondents' shed and Badri Prasad's house. It may belong to the said respondents. It may be a common passage or it may belong to Badri Prasad. Badri Prasad was not made a party to the suit. Upon the :

filing of the suit the first controversy raised by the petitioners was that this is a common passage being part of the abadi and that the Gaon Samaj had not been made a party to the suit either. The record reveals that the Collector had also not been made a party.

3. Thus, while the suit is under consideration there will arise issues whether the suit itself is maintainable and whether certain parties were necessary parties and had not been arrayed as parties to the suit. On this aspect this Court does not desire to comment. Any comment may reflect upon the controversy in the suit on merits or on the maintainability of it. Thus while refraining from commenting upon the contention of the parties to the suit on merits, one thing is clear that this was not such a case that the respondents have made out a prima facie case to seek injunction to prevent the petitioners from obtaining electricity through the shortest distance when part of the land may be a common passage.

4. The court had suggested to the parties that while the suit is pending consideration on merits, and let the better party win, it would be just and equitable that the petitioners do not remain without an electricity connection and any apprehension of danger of naked transmission lines passing over the : track on which there is a dispute, can be eliminated if safety is guaranteed to the party which lays a claim and has yet to succeed. It is not to be forgotten that it is the petitioners' case, as defendants, that the suit cannot proceed without certain necessary parties, being the Gaon Samaj, the Collector and Badri Prasad in front of whose house admittedly, the transmission lines will pass. This aspect will be left for consideration of the trial court. The Court suggested that while the suit is pending let electricity connection be provided to the petitioners from the pole which has already been pitched in a straight line in front of his house through insulated , P.V.C. cable, the charges of which will be paid by the petitioners. The P.V.C. cable insulated as it is, ensures safety as it eliminates : the naked wires passing over any track of j land. The right over the track of land is in dispute.

5. The Board has contended that as a result of the injunction they are not in a position to grant electricity connection as they do not desire to enter into the controversy raised between the parties and must await the final result of the suit. It is for this reason that the electricity connection has been denied to the petitioners. The Board is right in staying its hands at present as it must have clear cut directions from a court, so that it does not get any allegations for disobedience orders of the Court. The suggestion made by the court to the Board met with its approval in the sense that learned counsel appearing on its behalf stated that the obligation of the Board is to provide an electricity connection, and in the' facts and circumstances of the present case without getting involved in the factions between the two parties. Impliedly, the Board suggested that should this court order it, a connection will be provided immediately.

6. Thus, this court directs the State Electricity Board to provide an electricity connection to the petitioners from the pole which has already been pitched west of the respondent's shed and the house of Badri Prasad and take the transmission lines in a more or less straight line in front of the petitioners' house by an insulated P.V.C. cable. The charges for the P.V.C. cable will be paid by the petitioners. In case the suit fails then the difference of ordinary transmission lines and the charge for P.V.C. cable, as of date, will be added to the costs which will be saddled upon the respondents as plaintiffs. Should the suit succeed, then the transmission lines will be diverted in accordance with the decision of the trial court in the suit.

7. There is no reason for the merits of the suit in not proceeding without any further delay. The injunctions granted by the trial court and the lower appellate court have been modified in terms of the order passed by this Court. The petition is allowed with costs, which shall otherwise be easy.