

Subal Behera Vs. Executive Engineer, Cesu

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Court : Orissa

Decided On : Mar-31-2010

Reported in : 109(2010)CLT753

Judge : S.K. Mishra, J.

Appellant : Subal Behera

Respondent : Executive Engineer, Cesu

Disposition : Petition allowed

Judgement :

S.K. Mishra, J.

1. The Petitioner assails the action of the Opp. Party in disconnecting the electric supply to his premises. The Petitioner claims that since 1946 the father of the Petitioner & after him the present Petitioner & his family members are continuing to reside in the schedule property till date. The electric connection & the water supply connection were provided to the Petitioner in respect of the scheduled property. The Petitioner was also paying the electricity dues & water tax. The Petitioner was provided electricity domestic connection under consumer No. 01404698 & 01044937. His further case is that he has never defaulted in payment of the electricity dues nor he has violated any of the terms. On the threatened action of eviction by the G.A. Department of Government of Orissa, the Petitioner

approached the Learned Civil Judge (Senior Division), Bhubaneswar in Title Suit No. 1.9 of 1998 with the prayer for grant of permanent injunction against the said department & also prayed for declaration of occupancy right of the Petitioner & in the alternative for a declaration that the Petitioner is entitled to occupy the premises as he has perfected his title by way of adverse possession.

The Petitioner further pleads that the Civil Judge (Senior Division) directed maintenance of status quo vide Order Dated 20.02.1998. In spite of such an order, attempt was made to harass the Petitioner in issuing notice by the Bhubaneswar Municipal Corporation for eviction. Finding no other way out, the Petitioner approached this Court in W.P.(C) No. 8049 of 2008 & Misc. Case No. 7260 of 2008 & vide Order Dated 06.06.2008, this Court directed the Commissioner, Bhubaneswar Municipal Corporation to consider & dispose of the representation of the Petitioner dated 25.05.2008 within a period of 15 days from the date of receipt of such an order.

2. In the meantime, the suit in question was dismissed. The Petitioner filed an appeal against such dismissal. Learned District Judge, Khurda passed an order of status quo in respect of the suit property. The Petitioner however pleads that in order to frustrate the interim order that was to be passed in the appeal before expiry of the limitation, without any notice to the Petitioner, suddenly eviction machineries were brought near the premises of the Petitioner. The Petitioner & his family members are constantly at fear of apprehension that the said eviction team may attack the premises once again & forcibly evict the family of the Petitioner & bring down the structure completely in spite of the status quo, order passed on 11.11.2009. Hence, the Petitioner approached this Court again This Court by Order Dated 11. 12.2009 passed in W.P.(C) No. 17575 of 2009 directed that the Petitioner may file an application, if so advised, before the Learned District Judge, Khurda in the aforesaid appeal in order to implead the Bhubaneswar Municipal Corporation as a party & for a period of six weeks, no coercive, action shall be taken by the Bhubaneswar Municipal Corporation against the Petitioner in respect of the suit land.

The Petitioner further pleads that though he has paid the up-to-date electricity & water rent dues, disconnection has been made illegally. He further pleads that the bill dated 10.11.2009 raised under Consumer No. 01404698 was paid on 11.11.2009 & the bill dated 11.10.2009 raised under consumer No. 01044937 was paid on 22.10.2009. The Opp. Party even without serving a statutory notice has disconnected both the connections on 11.11.2009. Even the Petitioner's attempt for a representation was, not accepted. No statutory right has accrued in favour of the opp. Party to effect disconnection of an essential service. The Petitioner claims that the action of the Opp. Party is extremely illegal, perverse & without jurisdiction.

The Petitioner further pleads that there has been infringement of the right to life as guaranteed under Article 21 of the Constitution of India. However, the Petitioner pleads that the legal provision under the procedural law has also been transgressed, in addition, the Courts order has been violated by the licensee. It is, therefore, prayed by the Petitioner that the electricity supply may be restored to his premises.

3. The Opp. Party has filed counter affidavit, inter alia, pleading that the Petitioner was in unauthorized occupation of the plot No. 75, Saheed Nagar, Bhubaneswar. The State Government in General Administration Department under the Joint Eviction Programme decided to remove the encroachment over the said plot & accordingly, on 10.11.2009, the Addl. Secretary, G.A. Department directed the Opp. Party to disconnect the electric connection to the said plot, so that, the Joint Eviction Programme will be carried out on 11.11.2009.

In pursuance of the aforesaid direction given by the State Government, the Opp. Party disconnected the electric connection from the said Government plot in order to enable the officials to carry out the Joint Eviction Programme. In fact on 11.11.2009, the eviction programme was carried out & unauthorized construction over the said plot was removed. Subsequent to the demolition, Junior Manager (Electrical) vide his communication dated 13.11.2009 intimated the Opp. Party about the said demolition & accordingly, bill has been stopped.

The Opp. Party further pleads that the disconnection has been made in pursuance of the direction of the State Government, the notice as contemplated under Code 100 of the Orissa Electricity Regulatory Commission Distribution (Condition of Supply) Code, 2004 (hereinafter referred to as the 'Code' for brevity) was not issued to the Petitioner. The State Government has been empowered under Section 12 of the Orissa Electricity Reforms Act, 1995 to issue policy directives on matters concerning electricity in the State to the licensee & accordingly, a directive was issued under Annexure-A/1 to the Opp. Party to disconnect power supply over plot No. 75 for the purpose of evicting unauthorized encroacher. The said directive has been carried out by the Opp. Party as a licensee.

The Opp. Party further pleads that since the unauthorized encroachment has been removed over the said plot since 11.11.2009, the question of re-connection of electricity supply does not arise. The Opp. Party further claims that the Writ Petition is otherwise devoid of any merit & liable to be dismissed.

4. In course of hearing, this Court deputed an Advocate Commissioner to ascertain, whether any construction is still in existence or not in Hal Settlement Plot. No. 1207, under Khata No. 1033, Mouza-BBSR town, Unit-11, Saheed Nagar, corresponding to 1911-12 Settlement Plot No. 223 under Khata No. 4 in Mouza-Kalaraput, Area Ac. 0.106 decimals corresponding to G.A. Drawing No. C/3204, plot No. 75, Jamabandi No. 311/1488. The Commissioner has submitted the report indicating that one house with tin roof measuring an area of 32' x 25' exist on the above plot & the Petitioner, his mother, wife, one son & nephew of the Petitioner are residing. The house situates in South-West corner of the plot.

5. The Learned Addl. Government Advocate has also filed the relevant documents issued by the G.A. Department/wherein it is indicated that the unauthorised occupation of the Petitioner over the said plot was removed. Thereafter, the status quo order was passed. It is also revealed that from the report of the Revenue Inspector dated 17.03.2010 that the Petitioner has re-entered & constructed a tin house measuring approximately 12' x 15' & one Asbestos bath room of the size 6' x 6' violating the order of the Status quo passed in I.A. No. 603 of 2009 (R.F.A. No. 89 of 2009). In course of hearing, the Learned Counsel for the Licensee has

produced the copy of the Judgment passed by the Learned Civil Judge (Sr. Division), in which he has come to the conclusion that the Petitioner has not acquired occupancy right over the suit land nor he has perfected his right over the suit land. Hence, the Civil Judge (Sr Division) has dismissed the suit of the present Petitioner.

6. Regulation 4 of the Code provides that the application for seeking connection shall be signed by the owner or the lawful occupier with the consent of the owner of the premises for which supply is required & shall be submitted at the local office of the Engineer along with a non-refundable fee as per the amount fixed together with a sketch map of the premises & documentary evidence of his ownership or occupation of the premises in question. Basing on such provision, Learned Counsel for the licensee argued that unless the real owner of the property has consent to the same, electricity supply cannot be restored to the Petitioner.

7. The Opp. Party asserts that on 11.11.2009, the eviction was carried out & the electricity supply was disrupted on the request of the G.A. Dept. It is further seen that on 11.11.2009, the District Judge, Khurda, Bhubaneswar in I.A. No. 16.3, arising out of RFA No. 89 of 2009 ordered for maintenance of status quo in respect of the suit land. Thus, it is clear that the alleged eviction took place on 11.11.2009. On that date, the Dist. Judge passed the order for maintenance of the status quo. The Learned Advocate Commissioner has also reported that a structure is standing thereon, though the Learned Addl. Govt Advocate has contended that the same was constructed after the eviction drive.

8. It is not disputed that the electricity is an essential service for leading normal human life. It is not possible to lead life with dignity without electric supply. Disruption of electric supply has adverse effect on the education of the children Electricity is not a luxury. Rather it is an essential service. Moreover, the disputed title of the Petitioner is being adjudicated by the Learned District Judge, Khurda at Bhubaneswar. So in all fitness of things, the Petitioner should be allowed to have the facility of electric supply to his premises. However, such an order should not be considered as evidence of title or possession, in favour of the Petitioner over the case land.

9. In the result the Writ Petition is allowed. The Petitioner is at liberty to make afresh application for reconnection of electricity to his premises. The Opp. Party, on receipt of his application & charges for reconnection, shall provide electricity connection to the premises of the Petitioner within three days of the deposit.

There shall be no order as to costs.

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