

(2023-1)209 PLR 048
PUNJAB AND HARYANA HIGH COURT
Before: Mr. Justice Vinod S. Bhardwaj.
HINDUSTAN PETROLEUM CORPORATION LIMITED – Petitioner,
Versus

PUNJAB STATE POWER CORPORATION LIMITED and another – Respondents.
CWP-9987-2019 (O&M).

(i) Electricity Act, 2003 (36 of 2003), Section 2(5) - Constitution of India, Art. 226 - Alternative remedy - Available under the Punjab State Electricity Regulatory Commission (Forum and Ombudsman) Regulations, 2016, to raise grievances before The Consumer Grievances Redressal Forum constituted under Section 2(5) of the Electricity Act, 2003 - Objection as regards the availability of alternative efficacious remedy is well founded - However, taking into consideration the fact that the matter has remained pending before this Court since 2019 till 2022 for final adjudication, it may not be an act of balancing equity at this stage to direct the petitioner to re-agitate his entire grievance before the Consumer Grievances Redressal Forum at this stage.

[Para 8]

(ii) Alternative remedy - Ordinarily, a person ought to take recourse to the statutory remedies prescribed and High Court is not a Court of first instance.

[Para 8]

(iii) Electricity Act, 2003 (36 of 2003), Section 43 - Entitlement of an occupier of premises to seek electricity connection in terms of Section 43 of the Electricity Act, 2003 - Hindustan Petroleum Corporation Limited ('HPCL') had taken land on a lease of 30 years and a retail outlet was set up on the aforesaid leased land and it was allotted to one KK - Electricity connection was thereafter applied for by the allottee-KK and was released - Leased land thereafter was sold by its owner to one AK - Aforesaid sale was subject matter of challenge before the Civil Court but the suit was later dismissed and Revenue Authorities carried out mutations of revenue record in favour of the subsequent purchaser-AK who subsequently sold the same to VK - Petitioner continued to pay the rentals to AK - Dealership in favour of KK was terminated by the petitioner - HPCL and operation of the retail outlet was taken over by the petitioner-HPCL - Electricity supply was, however, disconnected on an application by the subsequent purchaser - VK - When the petitioner - HPCL submitted an application for issuing new connection for the said retail outlet, an objection has been raised by the respondents-PSPCL that consent/approval of the owner is required for the purposes of release of connection - As petitioner is in lawful occupation of the premises, entitled to electricity connection.

Cases referred to:-

1. (2023-1)209 PLR 032, *Mobin Ansari v. Punjab State Power Corporation Limited*.
Mr. Raman Sharma, for the petitioner. Mr. B.S. Khehar, for respondents - PSPCL. Mr. Nitin Sharma, for applicant - respondent No.3.

Vinod S. Bhardwaj. J (Oral) - (16th November, 2022) - The present writ petition has been filed under Articles 226/227 of the Constitution of India, seeking issuance of a writ of in the nature of certiorari declaring inaction on the part of the respondents for not releasing the electricity connection at the existing retail outlet of the petitioner situated in Village Behak Hasta Uttar, District Fazilka, with a further direction to the respondents to issue a new electricity connection.

2. A perusal of the facts show that the petitioner Hindustan Petroleum Corporation Limited (hereinafter to be referred as 'HPCL') had taken land measuring 42.68 M X 41.15 M (4 K-16M 7.5S) on a lease of 30 years vide registered lease deed dated 18.03.2005. A retail outlet was thereafter set up on the aforesaid leased land and it was allotted to one Smt. Kuldeep Kaur. An electricity connection was thereafter applied for by the allottee and was released in category of DSNRS vide account No.Y-53GT530006Y with sanctioned load of 13.04 KV. The aforesaid leased land thereafter was sold by its owner to one Ashok Kumar son of Diwan Chand, resident of Mandi Ladhuka, vide sale deed date 13.08.2007. The aforesaid sale was subject matter of challenge before the Civil Court but the suit was later dismissed by the said Court. After the challenge to the sale deed was rejected by the Court, the Revenue Authorities carried out mutations of revenue record in favour of the subsequent purchaser. Thereafter, the land in question is claimed to have been sold by Ashok Kumar to his brother Vinod Kumar, however, no such sale deed has been laid before the HPCL - petitioner. Hence, the petitioner continued to pay the rentals to Ashok Kumar.

3. The dealership in favour of Smt. Kuldeep Kaur was terminated by the petitioner - HPCL

through letter of termination dated 22.09.2016 and operation of the retail outlet was taken over by the petitioner – HPCL. An existing dealer has been handed over the operations of the retail outlet on Ad hoc basis as per the applicable policy till a regularly selected dealer is made available. The electricity supply was, however, disconnected on an application by the subsequent purchaser – Vinod Kumar. When the petitioner – HPCL submitted an application for issuing new connection for the said retail outlet, an objection has been raised by the respondents-PSPCL that consent/approval of the owner is required for the purposes of release of connection.

4. It is contended by the petitioner that the aforesaid stand adopted by the respondents is not valid and neither is it borne out nor is it within the walls of the statutory framework. He further submits that a duly registered lease deed in favour of the petitioner is already there and it is in lawful occupation of the premises and any such condition which is now being prescribed is per se beyond the statutes. He further places reliance on the judgment of this Court in the matter of *Mobin Ansari v. Punjab State Power Corporation Limited*¹ (2023-1)209 PLR 032, decided on 23.08.2022, wherein this Court has already ruled that the release of electricity connection cannot be denied to a person who is lawfully inducted into possession of a particular premises for want of consent/approval of the owner thereof.

5. *Per contra*, learned counsel appearing on behalf of the respondents – PSPCL has relied upon the stand taken in the written statement which reads thus:-

“4. That the above named Sh Vinod Kumar had moved an application dated 22/10/2018 (Annexure R-3) to the respondent no.2 requested not to release any electric connection at the this petrol pump along with a copy of jamabandi for the year 2013-14 dated 14/09/2018 (Annexure R-4), stating that he has purchased land measuring 04 Kanal 18 Marlas [i.e. comprised of Rect. no. 52 Killa no. 1/2(0-17) 10/1(2-16) Rect. no 53 Killa no 5/2/3 (0-3) 6/1(1-2)] situated within the revenue estate of Village Behak Hasta Uttar Tehsil & Distt. Fazilka, including the above said portion of petrol pump.

5. That Sh. Sachin Singla, Area Sales Manager (Retail) Abohar Sales Area of the petitioner had moved an application dated 24/10/2018(Annexure R-5) along with an exclusive copy of alleged lease agreement (wrongly typed as lease deed by the petitioner) dated 15.02.2005/13.03.2018 requesting the respondent no.2 to release an electric connection for the above said retail outlet. By way issuing a memo no 2691 dated 29.10.2018 (Annexure R-6), the above said Area Sales Manager (Retail) was intimated regarding the above said application of Sh. Vinod Kumar with further request to provide (i) copy of jamabandi whereby rent was transferred to Sh. Ashok Kumar as mentioned by in its letter. (1) copy of decision dated 03/03/2010 passed by the Court of Sh. Jaskaran Singh Collector (Additional Deputy Commissioner Ferozepur), (iii) copy of revenue record/jamabandi having an entry of lease an entry of mutation in favour of company, so that the respondents could be able to forward the concerned papers to its legal advisor for further proceedings.

6. That by way of issuing memo no. 225 dated 15.02.2019 (Annexure R-7), the above-named Sh. Vinod Kumar was intimated as to the above said request letter of Area Sales Manager (Retail) of the petitioner and was further directed to produce copy of injunction order within 7 days to the respondent no 2, if any, to restrain the respondent to release an electric connection for the above said retail outlet. In the meantime, the above named Sh Vinod Kumar again moved an application dated 22.02.2019 along with copy of legal notice dated 16.11.2018(Annexure R-8) addressing the respondent as well as to the different authorities of the petitioners, at his above said same lines as requested in his earlier application.

7. That in place of completing the formalities and documents, Sh. Rajiv Bansal, Chief Regional Manager of the petitioner had sent a letter dated 31.01.2019(Annexure R-9), whereupon a memo no 224 dated15/02/2019(Annexure R-10) was issued by the respondent no. 2 stating the above said Chief Regional Manager to provide fresh copy of jamabandi/revenue record having an entry of lease/mutation in favour of the petitioner/company along with required form etc. to apply for a new commercial connection (i.e. A & A Form duly signed by the competent authority, ID proof if signing authority & Test Report of load as required by the Company) etc. so that the respondent could proceed with the matter in order to release the above said connection. But till date not even a single condition has been fulfilled by the petitioner, rather the instant false petition has been filed by the petitioners in order to pressurize the respondents. It is worthwhile to narrate here that as per contents of para no. 1 of the petition, it is clear that the Area Sales Manager (Retail) was neither competent nor authorized person to apply the above an electric connection, who sent an application dated 24/10/2018 to release the above said connection to the respondent no. 2. It is also pertinent to mention here that the respondents never refused to release an electric connection to the petitioner. The respondents are ready to release an electric

connection subject to rules and regulations of the corporation So the present petition is liable to be dismissed.”

6. Learned counsel, however, does not dispute the possession as laid down by this Court in the judgment of *Mobin Ansari* (supra). He, however, contends that the petitioner has an efficacious alternative remedy available under the Punjab State Electricity Regulatory Commission (Forum and Ombudsman) Regulations, 2016, to raise his grievances before The Consumer Grievances Redressal Forum constituted under Section 2(5) of the Electricity Act, 2003.

7. I have heard the learned counsel for the respective parties and have gone through the averments contained in the petition along with accompanying documents. This Court in the matter of *Mobin Ansari* (supra) has held as under:-

“14. The core issue that would emanate for adjudication is as to whether a person who is in undisputed possession of the premises and is not a rank trespasser is entitled to the release of the electricity connection, despite a challenge raised regarding the nature of his occupation.

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Editor : Quote from para 14 at page 37 to para 31 at page 47 of case reported as Mobin Ansari v. Punjab State Power Corporation Limited, (2023-1)209 PLR 032, omitted. Please refer to above pages.

31. The aforesaid proofs described in the Supply Code, 2014 are only illustrative and are not exhaustive. It is not upto the Department to contend that in the absence of any of those illustrative documents, it shall not consider any other event or document of possession as a valid proof of possession.”

8. In so far as the objection as regards the availability of alternative efficacious remedy is concerned, said objection is well founded. However, taking into consideration the fact that the matter has remained pending before this Court since 2019 for final adjudication, it may not be an act of balancing equity at this stage to direct the petitioner to re-agitate his entire grievance before the Consumer Grievances Redressal Forum at this stage. The objection being sustained at this belated stage is likely to compound the difficulties. Even otherwise, the facts in the present case not being disputed, directing the petitioner to approach the Consumer Grievances Redressal Forum at this stage is mere a travesty of justice. Ordinarily, a person ought to take recourse to the statutory remedies prescribed and High Court is not a Court of first instance. The matter had remained pending for ruling the inter se rights of “owner” and “occupier” under the Electricity Act, 2003. The said view having now been taken, the lis is being examined on merits. The second aspect that has weighed is that an instrumentality of State is struggling to get an electricity connection, hence, despite the alternative remedy, the matter has been dealt under the writ jurisdiction considering the above exceptional circumstances.

9. Taking into consideration the fact that the current position in law has previously been settled by a precedent set by this Court, learned counsel for the parties are ad idem that in event of the petitioner approaching the Assistant Executive Engineer/Respondent No.2 - PSPCL, Fazilka, within a period of 04 weeks from today, appropriate steps in accordance with law shall be taken in a time bound manner subject to the petitioner complying with the requirements prescribed under the regulations framed and the connection thereafter shall be released within a period of 04 weeks thereafter.

10. The present petition is disposed of in above terms.
R.M.S. - Petition disposed of.