

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 6281 of 2021**

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YOGESH LAKHMANBHAI CHOVIYA

Versus

PGVCL THROUGH THE DEPUTY ENGINEER

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Appearance:

MR RATHIN P RAVAL(5013) for the Petitioner(s) No. 1,2
for the Respondent(s) No. 2

MR PREMAL R JOSHI(1327) for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE A.S. SUPEHIA**Date : 02/08/2022****ORAL ORDER**

1. Rule. Learned advocate Mr.Premal Joshi waives service of notice of rule for and on behalf of the respondent No.1.

2. Pursuant to the order dated 07.07.2022, the respondent has filed an affidavit-in-reply. The same is ordered to be taken on record.

3. The electricity connection to the petitioners is denied only for the reason that the land, which is occupied by the petitioners, is in the name of the Government and the Mamlatdar has initiated proceedings under Section 61 of the Gujarat Land Revenue Code, 1879 for removal of encroachment on the land in question.

4. Learned advocate Mr.Raval appearing for the petitioners has placed reliance on the order dated 27.01.2010 passed in Letters Patent Appeal No.91 of 2010 and also relied upon provision of Section 43 of the Electricity Act, 2003 (for short "the Act")

and has submitted that the provision refers for supply of electricity to any owner or occupier of any premises. It is submitted that the petitioners can be said to be "occupier" of the land in question and the respondents cannot deny the electricity connection to them.

5. In the present writ petition, the petitioners have stated that they are the owners of the concerned agricultural land, on which the electricity is sought however, the same has been denied by the respondent authorities for the reason that the petitioners have illegally occupied the Government land.

6. At this stage, it would be apposite to refer to Section 43 of the Act.

"Section 43. (Duty to supply on request): --- (1) [Save as otherwise provided in this Act, every distribution] licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:

Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission:

Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.

(2) *It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1) :*

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.

(3) *If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default."*

7. Section 43 of the Act specifically stipulates that licensee, shall, on an application filed by the owner or occupier of any premises, can supply of electricity to such premises.

8. The Division Bench of this Court, in the order dated 27.01.2010 passed in Letters Patent Appeal No.91 of 2010, has observed thus:

"In the present case, Counsel for the appellant has failed to show that any provision laid down under law or guidelines allowing a company to recover its dues by seizure of property or by auction sale of such property for which condition is imposed on consumer to show right or title in giving electrical connection. Such power being not vested under the law with the company and as the company cannot decide the disputed question of right and title, we are of the view that ownership or right of occupancy has no nexus with grant of electrical connection to a consumer."

9. Thus, the petitioners, who are the occupiers of the land, cannot be denied the electricity connection only because dispute with regard to

decision of the land in question is pending. The Division Bench has observed that the company cannot decide the disputed question of right and title and the ownership or right of occupancy has no nexus with grant of electrical connection to a consumer.

10. Under the circumstances, the respondent-Company is directed to supply electricity connection to the petitioners in the premises or in the property, where they are presently staying and occupying the same.

11. After the order was dictated, learned advocate Mr. Joshi has submitted that the petitioners will be supplied electricity connection as per *seriatim* and all the names of the consumers, who are seeking electricity connection are displayed on the website.

12. Under the circumstances, the respondent authority shall include the names of the petitioners in such list and provide electricity connection to the petitioners at the earliest in accordance with the list maintained by them.

13. The present writ petition stands allowed. Rule made absolute.

Sd/-
(A. S. SUPEHIA, J)

NVMEWADA