

GAHC010047942020



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Review.Pet./42/2020

ON THE DEATH OF DIPALI BARUAH KENWAR, HER LEGAL HEIRS
MONALISA KENWAR AND 2 ORS.

D/O- LATE DIPALI BARUAH KENWAR, R/O- MISSION ROAD, CHRISTIAN
PATTY, NAGAON TOWN, P.O, P.S. AND DIST.- NAGAON, ASSAM, PIN-
782001.

2: SRI SANJIB KENWAR
S/O LATE DIPALI BARUAH KENWAR
RESIDENT OF MISSION ROAD
CHRISTIAN PATTY
NAGAON TOWN
P.O. AND P.S. - NAGAON
DISTRICT - NAGAON
ASSAM
PIN-782001

3: MRS. GITA SINGH KENWAR

WIFE OF LATE RANJEEV KENWAR
DAUGHTER-IN-LAW OF LATE DIPALI BARUAH KENWAR
RESIDENT OF MISSION ROAD
CHRISTIAN PATTY
NAGAON TOWN
P.O. AND P.S. NAGAON
DISTRICT NAGAON
ASSAM
PIN-782001

VERSUS

DHARANI BHARALI AND 6 ORS
R/O- MISSION ROAD, CHRISTIAN PATTY, NAGAON TOWN, P.O, P.S. AND
DIST.- NAGAON, ASSAM, PIN- 782001.

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
DEPARTMENT OF POWER
DISPUR
GUWAHATI-781006.

3:THE CHAIRMAN
APDCL
HAVING ITS REGISTERED OFFICE AT BIJULEE BHAWAN
P.O. AND P.S. PALTAN BAZAR
GUWAHATI- 781007
DIST.- KAMRUP
ASSAM.

4:THE GENERAL MANAGER
CENTRAL ASSAM REGION
APDCL
TEZPUR UNDER P.O. AND P.S. TEZPUR
DIST.- SONITPUR
ASSAM
PIN- 784001.

5:THE ASSTT. GENERAL MANAGER

NAGAON ELECTRICITY DIVISION
NAGAON
P.O.
P.O. AND DIST.- NAGAON
ASSAM
PIN- 782001.

6:THE DIVISIONAL ENGINEER
APDCL
NAGAON UNDER P.O.
P.S. AND DIST.- NAGAON
ASSAM
PIN- 782001.

7:THE SUB DIVISIONAL ENGINEER
APDCL
NAGAON UNDER P.O.
P.S. AND DIST.-NAGAON
ASSAM
PIN-78200

Advocate for the Petitioner : MR. B CHETRI

Advocate for the Respondent : MR G CHOUDHURY

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

29.02.2024

1. Heard Mr. M.K. Borah, learned counsel for the review petitioner. Also heard Mr. G. Choudhury, learned counsel for the respondent nos.1/writ petitioner. Mr. B. Das, learned counsel appears for the APDCL i.e. respondent nos.3 to 7.

2. The review petitioner has prayed for review of the order dated 05.02.2020 passed by this Court in WP(C) No.213/2020, by which the writ petitioner has been given the liberty to file an appropriate application to the APDCL authorities, for restoration /new electrical connection in the premises in which he is presently residing in. Further, the APDCL is to then examine the said application and grant him the restoration/new electricity connection, if found entitled to the same.

3. The review petitioner counsel submits that there is a dispute with regard to title in the building being currently occupied by the writ petitioner. Title Suit No.32/2010, whereby both the parties had claimed title to the land and building in dispute, has been decreed in favour of the review petitioner. The First appeal has also been decided in favour of the review petitioner. However, the regular Second Appeal i.e. RSA 38/2013 which has stayed the decree and order passed in the appeal, is still pending before this Court.

4. The review petitioner's counsel submits that as the writ petitioner is an illegal trespasser into the property which is in dispute between the parties, the order dated 05.02.2020 passed in WP(C) No.213/2020,, allowing the writ petitioner to pray for restoration/new electricity connection should be set aside.

5. Mr. G. Choudhury, learned counsel for the writ petitioner, on the other hand submits that no case of review has been made out in terms of Order XLVII Rule 1 CPC. He submits that the review proceedings have to be confined within the 4 corners of Order XLVII Rule 1 CPC and it cannot partake the character of an appeal. The review petitioner having been unable to show that there is an error apparent on the face of the record, i.e. in the impugned order, no case for review has been made out. In support of his submission, he has relied upon the judgment of the Supreme Court in ***Meera Bhanja (Smt) vs. Nirmala Kumari Choudhury (Smt)***, reported in ***(1995) 1 SCC 170***.

6. Mr. B. Das, learned counsel for the APDCL submits that no new electricity connection has been provided to the petitioner till date.

7. I have heard the learned counsels for the parties.

8. The grounds for review, as submitted by the review petitioner's counsel, shows that there is no error apparent on the face of the impugned order dated 05.02.2020 passed in WP(C) no.213/2020, inasmuch as, the dispute with regard to title to the property in question, is still to be decided by this Court in RSA No.38/2013. Further, as held by the Supreme Court in the case referred to by

the learned counsel for the writ petitioner, a review petition cannot partake the character of an appeal. The ground taken by the review petitioner that the writ petitioner is a trespasser in the suit land has not been decided till date. As such, this Court does not find any merit in the review petition.

8. The above being said, in the case of ***Dilip (Dead) through LRs vs. Satish & Others, (Criminal Appeal No.810/2022), SLP(Crl.) No.8917/2019***, the Supreme Court has held that a person cannot be deprived of electricity. All that the electricity supply authority is to examine is whether the applicant for an electricity connection is in occupation of the premises in question. As such, the APDCL shall examine whether the writ petitioner is in occupation of the premises in question and if the same is in the positive, the APDCL should provide electricity connection, whether it be temporary or permanent, to the petitioner, which is permissible as per their regulations. The same should be done expeditiously.

9. The review petition is accordingly dismissed.

JUDGE

Comparing Assistant