

(2012) 04 DEL CK 0159

In the Delhi High Court

Case No : Writ Petition (C) 817 of 2012

Lokesh Kumar Gupta and Others

APPELLANT

Vs

Bses Rajdhani Power Ltd and Others

RESPONDENT

Date of Decision : 09-04-2012

Acts Referred:

Citation : (2012) 04 DEL CK 0159

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Aziz-ul-Hassan with petitioners No. 1 and 2 in person, for the Appellant; Deepak Pathak, for R-1/Bses. and Ms. Kum Kum Jain, for R-2 with respondent No. 2 in person, for the Respondent

Final Decision : Dismissed

Judgement

Hima Kohli, J.—The present petition is filed by the petitioners praying inter alia for directions to respondent No. 1/BSES to complete the formalities for installing an electricity meter at premises No. 107/4, Street No. 5, Krishna Nagar, Safdarjung Enclave, New Delhi, without awaiting a No Objection Certificate from their brother, respondent No. 2. On the first date of hearing, counsel for the petitioners had stated that a separate electricity connection was required to be installed in one room each occupied by petitioners No. 1 & 2 on the ground floor of the subject premises. It was further stated by the counsel that he may be permitted to amend the memo of parties by impleading all the legal heirs of their deceased mother, Smt. Munni Devi, the erstwhile owner of subject premises, who had expired in September, 1989, apart from Shri Naresh Kumar Gupta, who had already been arrayed in the memo of parties as respondent No. 2. Leave, as prayed for, was granted and the petitioners were permitted to file an amended memo of parties. Simultaneously, notice was issued to respondent No. 2, returnable on 5.3.2012.

2. On 5.3.2012, appearance was entered on behalf of respondent No. 2. On the said date, counsel for the petitioners had stated that No objection by way of

affidavits had been filed by respondents No. 3 to 7, who were impleaded as co-respondents in the present proceedings in terms of the amended memo of parties. As counsel for respondent No. 2 had stated that there was some previous litigation pending between the petitioners and respondent No. 2 with regard to the subject premises, she was directed to file a brief affidavit, with an advance copy to the other side.

3. The affidavit has not been filed by respondent No. 2. However, learned counsel states that the same is ready and she hands over a copy thereof, with an advance copy to the other side. The said affidavit is taken on record. As per respondent No. 2, the petitioners have deliberately suppressed material facts inasmuch as they have failed to inform the Court that both of them had approached the Permanent Lok Adalat in March, 2011 with a request for grant of a new electricity connection in the subject premises, and they stated before the said forum that their request had been denied by respondent No. 1/BSES due to objections raised by respondent No. 2. Copies of the proceedings dated 25.3.2011, 29.4.2011 and 6.5.2011, initiated by petitioners No. 1 and 2, are enclosed as Annexure-F & F-1 with the affidavit. A perusal of the said proceedings reveal that after considering the submission made by the petitioners, notice was issued by the Permanent Lok Adalat to the respondents No. 1 and 2 and thereafter, the matter was discussed between the parties who had sought time to arrive at an amicable settlement. However, thereafter both the petitioners abruptly stopped appearing before the Permanent Lok Adalat and consequently their petitions came to be dismissed in default on 6.5.2011.

4. It is submitted by learned counsel for respondent No. 2 that at the relevant time, the discussions between the parties were for the petitioners to pay their share of the electricity dues that were being borne by respondent No. 2 alone in respect of the electricity connection installed at the subject premises as their portion of the premises was also energized through the same connection. She submits that the said connection was earlier installed in the premises in the name of Lt. Smt. Munni Devi and in the year 2000, it was transferred in the name of respondent No. 2. She contends that instead of paying their share of the demand raised for the electricity consumed by them to the respondent No. 2, the petitioners suddenly backed off and stopped appearing before the Permanent Lok Adalat and that the details of the aforesaid proceedings have been deliberately withheld in the present petition so as to keep the Court in the dark.

5. When confronted with the aforesaid position, counsel for the petitioners concedes on instructions from his clients that the aforesaid proceedings did take place before the Permanent Lok Adalat, and he further seeks to explain the non-mentioning thereof in the present petition as a bonafide mistake. He also denies the submission made by counsel for the respondent No. 2 that no amount was being paid by the petitioners to the respondent No. 2 for the electricity consumed by them. Instead, it is asserted that certain amounts were regularly paid to the respondent No. 2 in cash.

6. The Court declines to accept the aforesaid explanation offered by the petitioners. The petitioners cannot deny the fact that they had approached the Permanent Lok Adalat for the same relief as they are seeking in the present petition, and that they had on their own stopped appearing before the said forum ever since May 2011. It is not denied that talks of settlement for arriving at an amicable settlement were initiated between the petitioners and respondent No. 2 before the Permanent Lok Adalat, but were not followed up by the petitioners. It was thus incumbent on them to have revealed the material facts in the present petition.

7. The submission made by the counsel for the petitioners that both the petitioners have been paying 1/3rd share each to the respondent No. 2 in respect of the electricity bills raised by respondent No. 1/BSES is not substantiated by any proof of payment or any receipts issued by respondent No. 2 in respect of monies allegedly received from the petitioners for the electricity consumed by them. The Court is, therefore, skeptical about the claim of the petitioners that they had been making payments in cash to the respondent No. 2 when admittedly, they have been in litigation with respondent No. 2 in respect of the subject premises.

8. A bare perusal of the petition shows that the petitioners have not revealed the factum of the legal proceedings initiated by them before the Permanent Lok Adalat much less the adverse orders suffered by them in the petition for grant of letters of Administration with respect to moveable/immoveable assets left by Lt. Smt. Munni Devi filed by petitioner No. 2 before the District Judge, Tis Hazari Courts, which was dismissed vide judgment dated 08.07.2009, a copy whereof has been enclosed by the respondent No. 2 alongwith his affidavit. The petitioners have also failed to mention the fact that in the year 2002, alongwith the other legal heirs of Lt. Smt. Munni Devi, they too had filed a civil suit for declaration, permanent and mandatory injunction against the respondent No. 2 in respect of a will left by the deceased, whereunder, she had bequeathed the subject property exclusively in favour of the respondent No. 2, which proceeding is stated to have been stayed by the Civil Judge. In view of the fact that the petitioners have approached the Court with unclean hands and have deliberately withheld material information, including all the past litigations between them and respondent No. 2, which relates to the subject premises, wherein the petitioners now seek directions to the respondent No. 1/BSES RPL Ltd. to install a new electricity connection in their favour, this Court declines to entertain the present petition. The same is accordingly dismissed with costs of Rs. 10,000/- imposed on the petitioners to be paid jointly to the respondent No. 2 within four weeks. In case of failure on the part of the petitioners to place on record the proof of payment of costs to the respondent No. 2, the Registry is directed to place the matter before the Court.