

C.R. CASE NO: 60 of 2018

CIS NO.: 60/2018

CNR NO: WBDJ08-000110-2018

JO CODE- WB01512

Order no. 40 dated 21.12.2022

Today is fixed for passing order.

Both sides file hazira.

Heard both sides in full on the previous occasion.

Ld. Advocate for the applicant had filed a petition dated 15.02.2020 praying for electricity connection and another petition dated 28.07.2021 praying for water and electric connection. On the submissions of both the parties, both the petitions were heard together as both the prayer is made for similar grounds.

Ld. Advocate for the petitioner submitted that there are three children who are studying without electricity and water till date and prayed for electricity and water connection. Ld. Advocate for the petitioner had also filed a photocopy of the admit card of Ashish Prasad dated 19.11.2019 and a photocopy of the timetable of Class 11 Annual Examination-February 2020.

Ld. Advocate for the respondent filed separate written objections against both the petitions dated 15.02.2020 and 28.07.2021. Ld. Advocate for the respondent submitted that the applicants in the present case do not hold rights to the said premises to demand any form of amenities. Ld. Advocate for the respondent further submitted that the applicants have forcefully entered the premises and have occupied it as of which a civil suit pertaining to Title Suit 1 of 2019 was filed by the father-in-law (rightful owner of the said property) and was decreed in his favour and is now pending for execution being case no. Title Execution 1 of 2020. Ld. Advocate for the respondent submitted that the three children of the applicant are not studying and the applicant is fabricating the fact to mislead the Court into believing the same. It is the contention of the respondent that the applicants are declared as illegal residents of the said premises by the Court of the Ld. Civil Judge Senior Division in Title Suit 1 of 2019 and the rightful owner of the said premises is Mr. Fuzdar Ram Mochi who is the father of the respondent. Ld. Advocate for the respondent had filed a copy of the order passed by the Hon'ble Calcutta High Court, Circuit Bench Jalpaiguri in WPA 2565 of 2021 in the case of Usha Devi Prasad v. The Additional Chief Secretary and others wherein the petitioner had prayed for water and electricity connection on the ground that the same is basic right and even a trespasser is entitled to the same. Ld. Counsel for the petitioner in that case had submitted that there is an application for recall of the ex parte decree. The Hon'ble

High Court held that in the facts and circumstances of this case, no relief can be granted to the writ petitioner as there is an adjudication that is lying writ large at the writ petitioner, that she is a trespasser. The Hon'ble High Court further held that in the event the said ex parte decree is recalled and the writ petitioner is allowed to contest the suit, the writ petitioner shall be entitled to make a prayer in the Court of Civil Judge (Senior Division), Kalimpong for a direction upon the PHE and WBSEDCL to provide water and electricity to her and accordingly the writ petition was dismissed.

It is evident that the applicant in the instant case is a trespasser of the said premises in which she has made the prayer for water and electricity connection and until and unless the decision of the Ld. Civil Judge Senior Division, Kalimpong in Title Suit 1 of 2019 is not set aside, she will remain a trespasser. Furthermore, the Hon'ble Calcutta High Court, Circuit Bench Jalpaiguri in WPA 2565 of 2021 in the case of Usha Devi Prasad v. The Additional Chief Secretary and others had held that the petitioner shall be entitled to make a prayer in the Court of Civil Judge (Senior Division), Kalimpong for a direction upon the PHE and WBSEDCL to provide water and electricity to the petitioner. The petitioner in the instant case ought to make the prayer before the proper forum that is, the Court of Ld. Civil Judge Senior Division, Kalimpong as directed by the Hon'ble Calcutta High Court. In view of the aforementioned facts and circumstances, this Court is not inclined to allow the prayer of the petitioner.

Hence, it is,

ORDERED

that the instant petition dated 15.02.2020 and 28.07.2021 filed by the applicant stands rejected.

That the petition dated 15.02.2020 and 28.07.2021 stands disposed of.

To **07.02.2023** for Evidence.

Sd/-

Judicial Magistrate (1st Class)

Kalimpong

Sd/-

Judicial Magistrate (1st Class)

Kalimpong