

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 15830 of 2022****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK Sd/-**

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Approved for Reporting	Yes	No
	Yes	

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MANOJBHAI KANJIBHAI RUPARELIYA

Versus

PASCHIM GUJARAT VIJ COMPANY LIMITED & ORS.

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Appearance:

MR HARESH N JOSHI(1871) for the Petitioner(s) No. 1

MR DIPAK R DAVE(1232) for the Respondent(s) No. 1,2,3

MR PRATIK Y JASANI(5325) for the Respondent(s) No. 4,5

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CORAM: HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK**Date : 23/03/2026****JUDGMENT**

1. **Rule** returnable forthwith. Mr. Dipak R. Dave, learned counsel waives service of notice of rule on behalf of respondent Nos. 1 to 3 and Mr. Pratik Jasni, learned counsel waives service of notice of rule on behalf of respondent Nos. 4 and 5. With consent of the learned counsel appearing for the respective parties, the matter is taken up for final disposal today.

2. Present petition is preferred by the petitioner under

Articles 21 and 226 of the Constitution of India, under the provisions of Electricity Act, 2003, under Rules 3 and 4 of the Electricity (Rights of Consumer) Rules, 2020 r/w the Gujarat Electricity Regulatory Commission (Electricity Supply Code and Related Matters) Regulations 2015 with below mentioned relief/s:-

"8(A) This Hon'ble Court may be pleased to issue a writ of mandamus and/or any other appropriate writ in the nature of mandamus and/or any other appropriate writ, order or direction directing the respondent No.3 to provide/restore new electricity connection in favour of the petitioner at the property of the petitioner;

(B) Pending the admission, hearing and final disposal of this petition, this Hon'ble Court may be pleased to direct the respondent No.3 to provide/restore new electricity connection in favour of the petitioner at the property of the petitioner;

(C) Any other and further relief or reliefs to which this Hon'ble Court deemed fit, in the interest of justice; may kindly be granted;"

3. The facts giving rise to present petition are that the petitioner is the owner and cultivator of agricultural lands bearing Revenue Survey Nos. 82 Paiki 1, 80, 81, 87 Paiki 2 and 88, admeasuring in aggregate Hectare 03-26-78 Are-Sq. Mtrs. The petitioner is in possession of the said lands and is earning his livelihood through agricultural activities carried out thereon.

3.1 The said lands were originally owned and cultivated by the petitioner's father, late Kanjibhai Vallabhjibhai Rupareliya. After his demise on 29.11.1995, the petitioner

has been cultivating and taking care of the said lands and continues to remain in possession thereof. The petitioner has also been recognized as a protected tenant by the Gram Panchayat.

3.2 As per say of the petitioner certain private respondents had earlier attempted to interfere with and grab the petitioner's land, which led to a police complaint; however, the dispute was subsequently settled. Thereafter, the petitioner continued to enjoy peaceful possession of the lands, as reflected in the revenue records.

3.3 The petitioner applied for a new electricity connection for the agricultural land bearing Revenue Survey No. 80. The application was approved and the requisite charges were paid. Upon request of the petitioner, the electricity company also agreed to upgrade the transformer capacity. However, when the officials attempted to carry out the work, obstruction was caused by respondent No.5, preventing installation.

3.4 Despite complaints and representations made by the petitioner and even by the electricity company to the police authorities, no effective action was taken. Subsequently, the electricity company raised objections on the ground that the well situated on the land was in joint name and required consent of another person, and on that basis refused to proceed with the installation of the electricity connection.

3.5 The petitioner made several representations to the concerned authorities seeking implementation of the sanctioned electricity connection, and also sought information under the Right to Information Act. Meanwhile, objections were also raised by private respondents before the electricity authorities, leading to internal correspondence and inquiry by the officials.

3.6 Ultimately, despite approval of the application and compliance by the petitioner, the electricity connection has not been released, giving rise to the present grievance. Being aggrieved by the inaction and arbitrary conduct of the respondent authorities in not providing the electricity connection, the petitioner has preferred present petition with above quoted relief/s.

4. Heard Mr. Joshi, learned counsel for the petitioner, Mr. Dipak R. Dave, learned counsel for respondent Nos. 1 to 3 and Mr. Pratik Jasani, learned counsel for respondent Nos. 4 and 5.

5. Learned counsel for the petitioner has submitted that the petitioner is a bona fide consumer who had applied for an agricultural electricity connection at the parcel of land situated at Village Morasa. It is submitted that the petitioner made an application for a new agricultural electricity connection on 22.09.2021, bearing application No. 14217692, which was duly received by the respondent authorities vide receipt No. QY182615 and pursuant thereto, the estimated charges were

communicated to the petitioner, and the petitioner has duly paid the said amount.

5.1 It is further submitted that the petitioner was already having an existing electricity connection of 10 KW transformer, which was required to be converted into a 16 KW transformer at the new location. However, at the time of processing and granting the electricity connection, respondent No.5, who is the brother of the petitioner, raised an objection contending that the well situated on the said parcel of land is jointly owned by the petitioner and respondent Nos.4 and 5, and that they are co-sharers. On such basis, it was objected that without his consent, the application of the petitioner ought not to be considered.

5.2 It is submitted that solely on account of such objection, respondent No.3, by communication dated 15.07.2022, refused to consider the application of the petitioner and rejected the request for supply of a new electricity connection, as well as for conversion of the existing 10 KW connection into a 16 KW transformer. It is contended that the respondent authority has acted in an arbitrary and high-handed manner in rejecting the application of the petitioner without properly appreciating the relevant facts and legal position.

5.3 Learned counsel for the petitioner submitted that the inaction on the part of respondent No.3 in not granting and/or restoring the electricity connection to the

petitioner is wholly illegal, arbitrary, unjust and contrary to the settled principles of law. He has submitted that the petitioner has duly established that he is the owner and is in lawful and peaceful possession of the property in question. Despite such clear establishment, respondent No.3 has failed to discharge its statutory obligation of providing electricity connection to the petitioner, which action is ex facie illegal and unsustainable.

5.4 Learned counsel for the petitioner has further submitted that Section 43 of the Electricity Act, 2003 casts a statutory duty upon the electricity distribution company to supply electricity to the owner or occupier of any premises upon application. He has submitted that the said provision has been consistently interpreted by this Hon'ble Court in catena of decisions, holding that once possession of the premises is established, the electricity company is duty-bound to provide connection. He has submitted that in the present case, even the pre-audit report carried out by respondent No.3 clearly reflects that the petitioner is the owner of the land bearing Revenue Survey Nos. 80 to 88, thereby substantiating the claim of the petitioner.

5.5 Learned counsel for the petitioner has submitted that the "right to electricity" forms an integral part of the right to life under Article 21 of the Constitution of India and the petitioner is entitled to claim the same and the inaction on the part of respondent No.3 is therefore not only contrary to the provisions of the Electricity Act,

2003, but also in violation of the Electricity (Rights of Consumers) Rules, 2020 and the Gujarat Electricity Regulatory Commission (Electricity Supply Code and Related Matters) Regulations, 2015.

5.6 Learned counsel for the petitioner has submitted that the denial and/or non-consideration of the petitioner's request by respondent No.3 is highly arbitrary, unreasonable and violative of Article 14 of the Constitution of India. Section 43(1) of the Electricity Act, 2003 mandates that electricity supply be provided to any person who is the owner or occupier of the premises. He has submitted that the petitioner fulfills both these requirements, being the owner as well as the occupier of the agricultural land in question. Moreover, the petitioner had already been granted electricity connection earlier and is therefore entitled to restoration of the same upon compliance with requisite formalities.

5.7 Learned counsel for the petitioner has submitted that the revenue records as well as the electricity bills issued by respondent No.3 clearly establish that the petitioner is in peaceful possession and is the owner of the property bearing Revenue Survey No. 80. The petitioner has been regularly paying the electricity bills for the said premises, and the receipts annexed on record further substantiate continuous possession and lawful entitlement.

5.8 In view of the aforesaid facts and circumstances, Learned counsel for the petitioner has submitted that the

action and/or inaction on the part of respondent No.3 is illegal, arbitrary, unjust, improper and bad in the eye of law, and therefore the same deserves to be quashed and set aside.

6. On the other hand, Mr. Dipak R. Dave and Mr. Jasani, learned counsels for the respondents have objected the petition.

6.1 It is submitted that the present petition is misconceived, premature and devoid of merits and therefore deserves to be dismissed in limine. It is submitted that the petitioner has challenged the communication dated 15.07.2022 issued by respondent No.3; however, the said communication merely requires the petitioner to procure a No Objection Certificate (NOC) from other stakeholders and does not, in any manner, reject the application of the petitioner. Hence, no cause of action has arisen for invoking the extraordinary jurisdiction of this Hon'ble Court.

6.2 It is further submitted that the requirement of obtaining NOC is just, proper and in accordance with law, particularly in the facts of the present case where the property in question involves multiple stakeholders. It is an admitted position that there already exists an electricity connection in respect of Revenue Survey No. 80 in the name of the father of the petitioner and respondent No.4, and the well situated therein is in joint ownership. Therefore, any unilateral act on the part of

the petitioner in seeking shifting or grant of electricity connection would be prejudicial to the rights and interests of the answering respondent.

6.3 It is submitted that the petitioner has not approached the authorities with clean hands and has suppressed material facts. The petitioner failed to disclose the existence of other stakeholders, incorrectly stated in Form A-1 that consent of co-sharers had been obtained, and produced defective and misleading documents with regard to the ownership of the well. Upon verification by the concerned Talati and preparation of Panchnama, it has been conclusively established that the well and the land are jointly owned, thereby fully justifying the insistence on obtaining NOC from all concerned parties.

6.4 It is further submitted that a bare perusal of the application submitted by the petitioner would reveal that the request is, in substance, for shifting of an existing electricity connection and not for grant of a fresh connection. As per the applicable regulations, including Condition No. 15(5) of Form A-1, such shifting necessarily requires consent of co-sharers. The answering respondent has categorically objected to the proposed action, as the same would seriously prejudice his right to use the jointly owned well for agricultural purposes.

6.5 It is submitted that respondent No.3 has acted strictly within the bounds of law and has neither committed any illegality nor acted arbitrarily. The impugned

communication is issued only to ensure that the rights of all stakeholders are protected and to balance the competing claims. The petitioner's intention is mala fide, aimed at depriving the answering respondent of his lawful rights and causing undue hardship.

6.6 It is a settled principle of law that a party who approaches this Hon'ble Court with unclean hands and suppresses material facts is not entitled to any equitable relief under Article 226 of the Constitution of India. In view of the aforesaid facts and circumstances, it is submitted that this Hon'ble Court may be pleased to dismiss the present petition and direct the petitioner to comply with the requirement of obtaining NOC as stipulated in the communication dated 15.07.2022, in the interest of justice.

7. I have perused the materials and relevant documents available on record. I have also gone through the record of the petition.

8. Having heard the learned advocates for the respective parties and having perused the material on record, this Court finds that the petitioner has duly established his ownership as well as possession over the subject property, more particularly the land bearing the concerned Revenue Survey Numbers. The revenue records, electricity bills issued by respondent No.3 and the pre-audit report placed on record clearly substantiate the case of the petitioner. Despite such material being

available on record, the inaction on the part of respondent No.3 in not granting or restoring the electricity connection to the petitioner is wholly arbitrary, unjust and contrary to the statutory mandate.

9. This Court notes that Section 43 of the Electricity Act, 2003 casts a mandatory statutory duty upon the distribution licensee to supply electricity to the owner or occupier of the premises upon application. Once the petitioner has established his status as an owner and occupier of the premises in question, respondent No.3 could not have denied or withheld the electricity connection. It is well settled in catena of decisions that the electricity authority cannot adjudicate disputes of title between co-owners nor can it insist upon consent of other co-sharers once possession of the applicant is established.

10. Considering the settled legal principle enunciated by the Hon'ble Apex Court and this Court as early as 2010, respondent Nos.1 to 3 cannot venture to decide issues among co-owners or questions of right and title, nor can they insist upon the consent of other co-sharers.

11. At this stage, it appropriate to refer decision of Division Bench of this Court in Letters Patent Appeal No.91 of 2010 dated 27.1.2010, whereby the Division Bench of this Court has observed that:-

"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."

12. In view of the above observations, this Court is of the opinion that the question of ownership or right of occupancy has no nexus with the grant of an electricity connection to a consumer who is otherwise entitled, and if there are no due electricity charges outstanding against the petitioner, his application cannot be denied by respondent Nos. 1 to 3 on the ground that the petitioner is unable to produce the consent of other co-sharers. Further, it appears that the estimated charges were communicated to the petitioner, and the petitioner has duly paid the said amount.

13. It is also appropriate to refer the decision of Hon'ble Apex Court in a case of ***Dilip (Dead) Through LRs vs. Satish and other reported in 2022 INSC 570*** wherein the Hon'ble Apex Court in paragraph No.9 has observed as under:-

"9. It is now well settled proposition of law that electricity is a basic amenity of which a person cannot be deprived. Electricity cannot be declined to a tenant on the ground of failure/refusal of the landlord to issue no objection certificate. All that the electricity supply authority is required to examine is whether the applicant for electricity connection is in occupation of the premises in question."

14. It is a settled position of law that electricity, being a

basic amenity, cannot be denied to a person on the ground of absence of a no objection certificate from the landlord, and the authority is only required to verify the applicant's occupation of the premises.

15. For the foregoing reasons the impugned communication dated 15.07.2022 issued by respondent No.3 is hereby quashed and set aside. The respondent No.1 to 3, more particularly respondent No.3 are hereby directed to supply new electricity connection to present petitioner as prayed for, as early as possible preferably within period of 8 weeks from the date of receipt of copy of the order. Rule is made absolute to the aforesaid extent. No order as to costs.

Direct service is permitted.

SURESH SOLANKI

Sd/-
(HEMANT M. PRACHCHAK,J)