

OFFICE OF THE ELECTRICITY OMBUDSMAN

(A Statutory Body of Govt. of NCT of Delhi under the Electricity Act of 2003)

B-53, Paschimi Marg, Vasant Vihar, New Delhi-110057

(Phone No.: 011-26144979)

Appeal No. 20/2020

(Against the CGRF-BRPL's order dated 17.09.2020 in CG. No. 07/2020)

IN THE MATTER OF

Smt. Simi Kumar

Vs.

BSES Rajdhani Power Limited

Present:

Appellant:

**Shri O.P. Ahuja, authorized Representative of the
Appellant**

Respondent:

**Shri R.S.Yadav, DGM (F), Shri S. Bhattacharjee,
Sr. Manager and Shri Deepak Pathak, Advocate,
on behalf of BRPL**

Date of Hearing: 13.01.2021

Date of Order: 19.01.2021

ORDER

1. The Appeal No. 20/2020 has been filed by Smt. Simi Kumar, the registered consumer, through her authorized representative Shri O.P. Ahuja, against the order of the Forum (CGRF-BRPL) dated 17.09.2020 passed in C.G. No. 07/2020. The issue concerned in the Appellant's grievance is regarding the shifting of existing feeder pillar (FP) and service pillar (SP) installed in front of her House No. 26-A, Ground Floor, LIG DDA Flats, Masjid Moth, Phase -I, New Delhi - 110048.



2. Briefly stated, the facts of the case are that the Appellant got the supply of her flat restored in the year 2018, after a gap of several years, during which period it remained sealed on account of adjudication of the matter of succession. The Appellant submitted that during the period the flat remained sealed, the Discom (Respondent) seems to have shifted the FP and SP opposite to the front portion of the house. The Appellant further stated that when she took over the possession of the house, the blockage of the entry of the house was noticed and she drew the attention of the Discom officials to the problem being faced by her. The Discom denied to take any remedial measures for shifting of FP & SP from in front of her house. The Appellant also stated that the front portion of the premises has been encroached upon by the Discom by installing the FP & SP, whereby the clearance from the front wall is now hardly 2 feet and the entrance passages is just about 3 feet only. Further, the blockage of the entry of her house, due to installation of FP/SP by the Discom is unique, as in the entire colony FP/SP had been installed across the rainy drains or over it instead of in front of their houses.

The Appellant also added that the matter concerning the unauthorized expansion of her house is the subject matter between MCD and the Appellant and the same is being dealt with separately. The Appellant also submitted a copy of the letter dated 01.11.2019 issued by South Delhi Municipal Corporation (SDMC), wherein it has been brought out that there are deviations in the aforesaid building against standard building plan at Ground Floor which needs to be demolished on account of unauthorized construction. However, the Appellant submitted that there are some minor adjustments which are always permissible and compoundable under the rules and not denied by the Appellant. The Appellant denied having the original lay out plan of the subject cited flat as she being the successor of the house and these DDA Flats are very old and were constructed way back in the year 1981. She again reiterated and stressed that there are reasons to believe that during the period this flat remained vacant the FP/SP were shifted in front of her house by the Discom since in all other houses of the area, the FP/SP are placed on rainy drains etc., instead of in front of those houses. The Appellant filed a complaint with the CGRF, but as she was not satisfied with the order of the CGRF, hence preferred this appeal.

In the light of above, the Appellant prayed that the encroachment undertaken by the Discom causing the complete blockage of the front of the house, may be ordered to be removed at their cost by way of shifting the gadgets



across the rainy water drain or over it, as per the procedure adhered to by them for the other houses of the Colony.

3. The Discom in its reply submitted that the instant appeal preferred by the Appellant against the order of the CGRF, whereby the CGRF was pleased to dismiss the complaint on the ground that the plea of shifting of FP/SP are highly misconceived in as much as the Appellant is trying to take advantage of her own wrong, whereby she encroached the public land so as to block her own entry and in the garb of present appeal is trying to perpetuate the encroachment and thus the present appeal deserves dismissal. The Discom stated that admittedly the FP in question had been installed much prior to the construction in the existing locality and premises in question. It is not the case that the Discom has installed the said feeder pillar recently. It is the Appellant who subsequent to getting the possession of the property ventured into the encroachment drive and by way of illegal and unauthorized construction got constructed one room which brought the property near to the feeder pillar. Further, the Notice dated 01.11.2019 sent by them to the Appellant regarding the unauthorized construction and extension of the existing property to the near of the feeder pillar is self explanatory of the fact that it is the Appellant who not only has violated the law by doing unauthorized construction but has audacity to approach the CGRF to legalize the illegality.

Further that the Appellant in the complaint as well as appeal has admitted the illegal construction and even photographs clearly point out the illegal construction and the illegal construction/extension has been made in such a manner that the property comes near to the feeder pillar. It is not the feeder pillar which has travelled to the property but the property by way of illegal extension has been brought near to the FP yet the Appellant is claiming equity being violator of law. The Discom further stated that the present appeal has raised vexed question of facts where the Appellant claiming that the Discom got the feeder pillar erected near the house, whereas it is their consistent plea that the said feeder pillar was installed as per layout plan at the place earmarked much before the property got constructed. Such disputed facts as asserted by the Appellant needs extensive trial and as such the Appellant needs to exhaust proper remedy by way of civil suit and same cannot be done in the summary proceeding in this appeal and as such the present appeal is frivolous and devoid of any merit.



The Discom further argued that without prejudice to the submissions made above, it is submitted that the relief of shifting of the feeder pillar is barred by limitation for adverse possession. If the plea of the Appellant is taken on face value, that the said feeder pillar had been in place prior to the construction of the property, the same is beyond the period of limitation for adverse possession which is 13 years. Admittedly, the feeder pillar has been in place like it is now, for more than many decades when the layout of the colony was made by DDA and place was earmarked. In addition to above, it was further pointed out by the Discom that during pendency of the complaint, the CGRF went an extra mile to settle the issue by directing the joint inspection to see the feasibility, if any, and the officials of Discom during the inspection found shifting of feeder pillar not possible due to technical unfeasibility, given the fact that it also feeds the supply to other nearby houses and due to some other technical issues attached with such shifting. In view of the technical opinion of experts who have opined against such shifting, it is requested that the appeal is meritless and liable to be dismissed.

4. The Discom also stated that without prejudice to the aforesaid submissions, it is submitted that the law relating to the shifting of FP/installation has been settled by the Hon'ble High Court in a number of cases and the DERC Regulations also prescribe the condition and terms which are required to be observed and the same was mentioned in their letter dated 10.05.2019 which is required to be followed by the Appellant, if she so wishes to get the said FP shifted. As per the letter, the Discom had communicated to the Appellant to provide NOC from DDA, NOC from nearby residents, NOC from concerned RWA and NOC from IGL for shifting the FP/SP at new location. Once the above documents are provided by the Appellant, the joint site inspection will be carried out for new location of FP and an estimate will be raised for the same which needs to be paid by the Appellant and only after the above, the work will be started subject to no hindrances at site. The Discom also submitted that there are total eleven service pillars in the colony of Masjid Moth Phase I & II, which are illegally encroached by different residents by way of illegal constructions near feeder pillars which is not only dangerous but is also in violation of law as well and notices for such illegality have already been served to remove such illegal constructions near feeder pillar.



The Discom also added that the electrification of DDA flats, Masjid Moth, Phase I & II was done before the occupation started and after completion of electrification no further equipment/installation was added in the system. The construction made by the Appellant is illegal and in this regards they have served notices twice to the Appellant and have asked her to remove the illegal construction. The Discom further stated that since our installations are existing originally since the time of electrification of the colony at the extant location, which was allocated by the authority in the whole colony, hence, they are unable to shift the feeder pillar from the existing location. In view of the above submissions the Discom submitted that the Appellant has no case on merit and the same deserves dismissal.

5. After hearing both the parties at length and considering the material on record, the basic issue revolves around the fact that the Appellant wants to get the FP/SP shifted from in front of her house, as the same are obstructing the free entry to her house and she had to make an alternative entry of about 3 feet below the stairs as a stop gap arrangement, which is quite inconvenient and impractical. It is observed that the Appellant shifted to the said premises after a gap of around 30 years and found the FP/SP situated in front of her house. It is pertinent to point out here that neither the Discom nor the Appellant could produce the original layout plan issued by DDA, which could have indicated the exact location of FP/SP at that point of time. In view of the non availability of the original layout plan it is not possible to adjudicate as to whether the FP/SP had been shifted later on by the Discom or they are situated at the extant position since the beginning. Secondly, it is also important to note that SDMC has issued a notice dated 01.11.2019 to the Appellant for deviation against standard building plan at ground floor which further states that it has been established that unauthorized construction/deviation have been carried out in the said building. Similarly, the Discom has also issued notices to the Appellant and some others for unauthorized construction.

It is also observed that the Discom has carried out site inspection along with authorized representative of the Appellant twice on the direction of the CGRF in order to explore the feasibility of shifting or relocating of feeder pillar. As per the report and as explained by the Discom that due to the unauthorized expansion done by the Appellant and due to technical constraints of feeding wires, it is not possible to shift the FP/SP to some other location. In view of the above background, it is held that shifting/relocation of the feeder pillar is neither



technically feasible nor legally appropriate as the unauthorized extension has been carried out by the Appellant in such a manner that no space is available to carry out the same. In view of above background, it is apparently evident that the Appellant's plea for shifting of feeder pillar and service pillar from in front of her house is not feasible in the present scenario. However, in case the Appellant if so desires to bear the cost and applies for shifting of the FP/SP, the Discom may consider the possibility keeping in view the technical feasibility, space availability and other constraints into consideration.

Hence, no substantive case is made out for any interference with the verdict of the CGRF and the appeal is disposed of accordingly.


19/1/2021
(S.C.Vashishta)
Electricity Ombudsman
19.01.2021