

19-11-2020
Subrata

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

M.A.T.No.597 of 2020
Md. Jabir Alam @ Jabo

-vs-

Niaz Mohammad & Anr.

with

CAN No.1 of 2020

and

CAN No.2 of 2020

and

CAN No.3 of 2020

Mr. Imtiaz Ahmed	
Md. Ibrahim	
Mr. Hasan Shams	...for the appellant
Mr. P.K. Pakrashi	...for respondent no.1
Mr. Suman Ghosh	...for CESC

A disputed question of fact was involved in the writ petition. The dispute, being whether the writ petitioner-first respondent was in possession of the premises in question, for the purpose of obtaining electricity connection from CESC Ltd.

The writ petitioner made an application to CESC for electricity connection in March 2020. On the basis that CESC had no objection to granting electricity connection to the writ petitioner, his prayer to obtain electricity connection was allowed at the motion stage by the learned single judge by his order dated 15th September 2020 with a direction on the officer in charge of the Metiabruz police station to render assistance in the matter.

Now, it is stated by Mr Ghosh appearing for CESC that, during inspection, his client found the writ petitioner in possession of the premises.

This fact was not recorded in the impugned order.

In our considered view, the matter, particularly the question of possession, even as prima facie possession, should have been decided on affidavits.

However, certain facts are noteworthy.

The application for electricity was in March 2020. Not much long, thereafter an inspection was made by the licensee when it found the writ petitioner to be in possession.

Learned single judge has observed that CESC has no objection to granting electricity to the writ petitioner. The fact is that eight months have elapsed and that the parties are in the same position.

As the point involved is short and in that view of the matter, we dispose of the appeal and the connected applications by setting aside the impugned order dated 15th September 2020 and directing the writ to be heard on affidavits.

Affidavit-in-opposition to be filed by 7th December 2020; affidavit-in-reply by 16th December 2020.

Learned single judge may be requested to hear out the writ application expeditiously.

In the mean time, on the basis of the aforesaid inquiry and report of CESC Ltd and the fact that the application is pending for eight months, the writ petitioner-private respondent shall be entitled to a temporary electricity connection, if the premises in question is without electricity, subject to any order passed by the writ court or any civil court. If there is any resistance, the officer in charge of the local police station will facilitate the electricity

connection to be effected in terms of this order.

This order is to be implemented within a fortnight from date.

It is made clear that this grant of temporary electricity connection will not create any right in favour of the private respondent-writ petitioner in any manner whatsoever.

[I.P. Mukerji, J]

[Md. Nizamuddin, J]