

24-12-2020
Subrata

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A.No.8446 of 2020
Isha Buildcon LLP & Anr.
-vs-
CESC Limited & Ors.

Mr. Sounak Bhattacharya
Mr. Dipankar Halder ...for the petitioners

Mr. Himadri Sekhar Chakraborty ...for the State

Mr. Amitava Chowdhury ...for CESC

Mr. Sukumar Bhattacharyya
Ms. Sayani Bhattacharya...for respondents no.5&6

The petitioners say that they purchased 5/8 undivided share of interest in the property comprised in premises No. P-322, Swamy Swarupananda Sarani (formerly known as P-322, CIT Road Scheme, VIM), P.O. Kankurgachi, P.S. Phoolbagan, Kolkata – 700 054 (hereinafter referred to as the said premises) and have been put into possession of certain portions thereof by their vendors. The petitioners say that they want to use the portion under their occupation for commercial purpose. They applied for an electric connection, but the same could not be given by CESC Limited in view of the resistance put up by the private respondents (respondents no.5 to 7). The petitioners therefore seek necessary direction upon CESC Limited to provide the electricity connection.

On behalf of CESC Limited, it is submitted that the private respondents have resisted its officials from inspecting the existing service connection without which the connection to the petitioners by installing a

meter cannot be given. CESC Limited says that the meter room wherein the existing service connection is situated is locked and the keys are retained by the private respondents. Access is therefore denied to the officials of CESC.

On behalf of respondents no.5 and 6, it is submitted that the petitioners have approached this court with unclean hands suppressing material facts. It is further submitted by the said respondents that despite pendency of a civil suit, the petitioners have surreptitiously purchased the undivided share of and in the property denying the said respondents from exercising their right of preemption. It is also submitted by the said respondents that the petitioners are claiming to be the joint owner of the property and user of the common place at the said premises by exerting such right, despite being a stranger to the property.

After hearing the parties and considering the materials on record, I find that the possession of the petitioners is admitted. The petitioners claim to have purchased the property by a registered deed for valuable consideration. Unless such registered deed is dislodged by an order of a competent civil court, the petitioners remain entitled to exert their right as the joint owner of the said property. The right of preemption claimed by respondents no.5 and 6 has also to be adjudicated by a competent court of law.

The disputes in connection with the right, title and interest of and in the said property inter se between the petitioners and the private respondents cannot stand in the way of the petitioners getting an electricity connection, particularly when the petitioners

are in occupation of a portion of the said premises. Assuming without admitting that the petitioners are the trespassers, then also the petitioners are entitled to electricity connection unless evicted by due process of law. So far as the use of the said premises by the petitioners for commercial use is concerned, the petitioners are required to obtain change of user from the concerned municipal authority.

In the facts and circumstances, I direct CESC Limited to inspect the existing main supply and the common meter room at premises No.P-322, Swamy Swarupananda Sarani (formerly known as P-322, CIT Road Scheme, VIM), P.O. Kankurgachi, P.S. Phoolbagan, Kolkata – 700 054 on December 29, 2020 at 11.30 a.m. It is expected that respondents no. 5 and 7 will cooperate with the officials of CESC at the time of inspection.

The respondent no.4 (the officer in charge, of Phool Bagan police station) shall ensure that there is no breach of peace at the said premises or in the precincts thereof at the time of inspection by CESC.

It is made clear that if the common meter room wherein the main service connection is located and the meters are installed, the officials of CESC with the help of the respondent no.4 shall break open the padlock for the purpose of inspection, if the same is locked and keys are not available. This order is given as the meter room cannot be kept under lock and key denying the access to the officials of CESC as the same may be cause of an accident.

After inspection, if CESC finds that a connection can be given to the petitioners, they shall

raise the quotation within 7 days from the date of inspection. Subject to payment of all costs and expenses for the new connection, CESC shall give the new connection to the petitioners within 3 days from the date of payment being made by the petitioners.

It is also made clear that new connection, if given to the petitioners at the said premises, will not create or abridge or extinguish any existing right of the petitioners as to the said premises.

Nothing remains further to be adjudicated in the writ petition and the same is accordingly disposed of without any order as to costs.

Since I have not called for any affidavits, the allegations contained in the writ petition are deemed to have not been admitted by the respondents.

Certified photostat copy of this order, if applied for, shall be given to the parties.

[Arindam Mukherjee, J]

