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15.12.2020
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Ct23

WPA 9505 of 2020
(Through Video Conference)

Ishrat Parveen
Vs.
State of West Bengal & Ors.

Mr. Bidhayak Lahiri,
Mr. Md. Kalam,
Mrs. Bhaswati Lahiri
... For the petitioner.

Mr. Sudipto Panda
Mr. Subrata Ghosh,
.... For the State.

Dr. Madhusudan Saha Roy,
Ms. Bandana Basu
.... For CESC Limited.

Mr. Kingsuk Mondal,
Mr. Pradip Kumar Mondal
... For the respondent nos. 8 & 9.

In terms of the order dated 9th December, 2020, an inspection by the C.E.S.C. Limited had been carried out.

C.E.S.C. Limited has filed a report, the copies whereof have been given to the petitioner and the private respondents. Let the report filed on behalf of the C.E.S.C. Limited be taken on record.

The inspection report could not be made over to the learned advocate for the State as they are appearing through the virtual mode. Learned advocate for the State is directed to collect the inspection report from the C.E.S.C. Limited, if so instructed.

On perusal of the inspection report, I find

that C.E.S.C. Limited has observed that a new service connection at the petitioner's premises, bearing no.T-210/10, Murray Road, Methatalab Dakati Bagan, P.S. Rajabagan, P.O.Bartalla, Kolkata – 700 018, can be given only by laying underground cable beneath the 6 feet wide passage in front of the petitioner's premises. The report, however, says that the 6 feet wide passage, according to C.E.S.C. Limited, is maintained by Kolkata Municipal Corporation (in short, KMC) and the water supply pipes of KMC have been laid through such passage. The report further reveals that the private respondents were present at the time of inspection.

On behalf of the private respondents, the report filed by C.E.S.C. Limited is objected to. The private respondents say that the 6 feet passage is the exclusive property of the private respondents and that will be evident from the record of right and the title document copies whereof were placed before the Court.

The petitioner is only interested in getting electricity connection and says that 6 feet wide passage is also used for ingress and egress of the petitioner.

The private respondents, however, dispute the right of ingress and egress of the petitioner and alleges that the petitioner uses another alternative

route for the purpose of ingress and egress to the petitioner's premises.

The writ Court cannot go into the civil disputes between the parties and the same has to be decided by a competent civil Court having jurisdiction over the matter. The petitioner wants an electricity connection. Under section 43 of the Electricity Act, 2003, the licensee, in the instant case, C.E.S.C. Limited, is obliged to grant electricity connection to the petitioner in the event, the petitioner pays all the necessary charges and fulfils the statutory requirements unless the same cannot be given for a supervening impossibility .

As to the right over and in respect of the passage in question, this Court in exercise of its writ jurisdiction, is not clothed to decide upon. On a prima facie finding, it appears to this Court that connection sought to be effected by laying underground cable through the 6 feet wide is the only possible way to give connection. The nature of the said passage which according to C.E.S.C. Limited is a KMC maintained common passage as per the petitioner is a common passage, an exclusive property according to the private respondents is not required to be gone into at this stage when the same will be at the highest be damaged for the purpose of laying the underground cable. The private

respondents have to establish their exclusive rights over and in respect of the 6 feet wide passage. Only upon establishing the same the private respondents can be entitled to claim compensation from the licensee for having caused damage while executing the work on their land. In the absence of such declaration at this stage, no claim for compensation can be entertained or relegated to the authority concerned for due adjudication.

The petitioner cannot be deprived of electricity. The licensee who possess the technical expertise and the authority to give connection has opined that there is no alternative route for giving electricity connection except the said passage. In such circumstances, I direct C.E.S.C. Limited to lay underground cable through the 6 feet wide passage in question for effecting new electricity connection to the petitioner's premises, being premises no.T-210/10, Murray Road, Methatalab Dakati Bagan, P.S. Rajabagan, P.O.Bartalla, Kolkata – 700 018. The respondent no. 6, being the Officer-in-Charge, Rajabagan Police Station, Kolkata – 700018, is also directed to render police assistance to C.E.S.C. Limited for laying underground cable through the passage and effecting electricity connection to the petitioner's premises at the cost of the petitioner, if occasion so arises. It is expected that

the private respondents shall co-operate in the matter of laying cable. The entire exercise of laying the underground cable and effecting new connection to the petitioner's premises shall be completed by 31st December, 2020, subject to the petitioner's making payment of all charges to C.E.S.C. Limited as also the cost of police assistance, if so required to be rendered and other statutory compliance.

I make it clear that I have not adjudicated any civil right over and in respect of 6 feet wide passage in question. All points regarding the nature of the said passage, as to whether it is a common passage or an exclusive property of the private respondents, are left open. The laying of underground cable in the said passage will in no way create or abridge or extinguish any right of the parties.

Nothing further remains to be adjudicated in the writ petition, the same is accordingly disposed of.

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

Urgent photostat certified copy of this order, if applied for, is to be given to the parties upon usual undertakings.

(Arindam Mukherjee, J.)

