

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.A. No. 18572 of 2021

Rajib Paul

Vs.

The Calcutta Electric Supply Corporation Limited and others

For the petitioner : Ms. Shebatee Datta

For the CESC : Mr. Suman Ghosh

For the respondent no.4 : Mr. Sanjib Seth

Hearing concluded on : 08.12.2021

Judgment on : 14.12.2021

Sabyasachi Bhattacharyya, J:-

1. Peculiar circumstances have arisen in the present case. The petitioner claims to be one of the co-owners in respect of Premises No. 33, Sashi Bhusan Chatterjee Lane, Bally, Howrah. It is alleged that the other co-owners of the petitioner, by practising fraud upon the petitioner, have executed a registered sale deed in favour of respondent no.4. The petitioner lodged a complaint before the Bally Police Station in respect of such allegedly fraudulent act.

- 2.** The writ petitioner has also filed a suit for partition, declaration and permanent injunction against the respondent no.4 and the other co-owners in the Second Court of Civil Judge (Senior Division) at Howrah, bearing Title Suit No.337 of 2021. In the said suit, on an application of the petitioner for temporary injunction, the civil court passed an order on June 22, 2021 directing the plaintiff/petitioner as well as the defendants (including private respondent no.4) to maintain *status quo* in respect of nature, character and possession of the disputed property and also not to create/alienate the said property in respect of a third party. Such ad interim order, initially passed on June 22, 2021, was subsequently extended from time to time, lastly till January 15, 2022.
- 3.** In the meantime, the private respondent communicated with the CESC Limited and had the electric meter existing in the said premises transferred in the name of the respondent no.4 in place of the petitioner. The petitioner alleges that the CESC authorities, without causing inspection and/or verification, effected such transfer of name, without any prior notice to the petitioner. Subsequently, on the request of the private respondent no.4, that is, the transferee-consumer, the CESC Limited temporarily disconnected the electric supply to the premises.
- 4.** The petitioner alleges that he and his family, including a three-year old child, is living without any electricity, due to such disconnection, since July 10, 2021. Despite several requests to the CESC, the CESC has not restored the electric supply to the premises.

5. The present writ petition has been filed primarily for a writ in the nature of mandamus directing the CESC Limited to cause immediate restoration and/or reconnection of the petitioner's electric supply at the said premises, at the meter having Consumer No.62178021004.
6. Learned counsel for the CESC submits that the CESC transferred the name of the consumer in the name of the respondent no.4 upon the respondent no.4 having deposited a copy of the registered transfer deed. As such, it is beyond the charter of the CESC limited to have taken evidence and/or decide the title of the parties on merits. In view of the deposit of the sale-deed in the name of the transferee, the CESC transferred the name regarding the consumer number-in-question and, on subsequent request from the transferee-consumer, temporarily disconnected the electric supply of the said premises. As such, unless the present consumer, that is, respondent no.4 applies for restoration of the connection to the premises, there is no scope for the CESC limited to restore the electric supply.
7. On the other hand, since the petitioner no longer has any *locus standi* to have a new electric connection from the same meter, since it is not permissible in law to give different connections in respect of the same premises in the name of different persons, the hands of the CESC to are tied with regard to acceding the petitioner's request for reconnection.
8. Learned counsel appearing for the respondent no.4 categorically contends that the CESC transferred the name of the consumer no. following due process of law. The respondent no.4, being the present

owner, has every right to have the electric meter transferred in his own name and subsequently to have disconnected the said connection temporarily, since the respondent no.4 is not having requirement for electricity at the said premises at the present moment.

9. It is further submitted on behalf of the respondent no.4 that, in view of the *status quo* order granted by the Civil Court, this Court, sitting in writ jurisdiction, ought not to vary such *status quo* order by way of permitting installation of a new connection in the name of the petitioner.
10. Upon going through the materials-on-record it is seen that the respondent no.4 has purchased the property by a registered sale deed from the co-owners of the property, which carries a presumption of correctness, unless rebutted before a competent civil court. As such, it was not unethical for the CESC Limited to have transferred the electric meter in the name of the petitioner.
11. However, the respondent no.4 is adopting a “dog in the manger” policy by disconnecting the electric supply to the premises transferred of the meter in his own name on the one hand and, on the other, not permitting the petitioner to take electric connection from the said meter.
12. The binding force and authenticity of the deed of sale in favour of respondent no.4, of course, shall be decided in the title suit pending before the civil court, since the same has been specifically challenged by the petitioner in the said suit.

13. The order of *status quo* passed in respect of the suit property is in respect of the nature, character and possession of the suit property and restraining the parties from creating interest/alienating the suit property in favour of any third party.
14. By no stretch of imagination does such *status quo* order debar the CESC Limited from giving a new connection to the petitioner upon disconnecting the existing connection or prevent this court from directing the respondent no.4 to permit the petitioner to use electricity from the existing meter.
15. The Civil Court specifically accepted the contention of the petitioner as regards the petitioner being in occupation of the suit premises. On such basis, the *status quo* order, *inter alia*, in respect of nature, character and possession of the suit property was passed.
16. On the other hand, although it is mentioned in the purchase deed of respondent no.4 that possession was being handed over contemporaneously to the said respondent by the vendors, no proof of physical possession has been handed over to the respondent no.4 has been produced, even *prima facie* to upset the finding of the Civil Court, at this premature juncture, to the effect that the petitioner is in possession of the disputed property.

- 17.** That apart, under Section 43 of the Electricity Act, 2003 as well as under Article 21 of the Constitution of India, the occupier has the right to get electric connection to her/his premises, which is a corollary of the fundamental right to life guaranteed by the Constitution of India.
- 18.** Hence, respondent no.4 cannot, in an oblique process, prevent the petitioner from enjoying electric supply to the disputed premises, since the petitioner is evidently in physical occupation of the suit premises.
- 19.** Moreover, the CESC Limited transferred the electric meter in the name of respondent no.4 behind the back of the petitioner, since no proof has been furnished to establish that any notice or right of hearing was given to the petitioner, in whose name the electric meter was standing originally, prior to such transfer.
- 20.** In the absence of such notice and/or proof of hearing to the existing consumer, the decision to transfer the name cannot operate as sacrosanct and binding on the petitioner.
- 21.** In the present case, the respondent no.4 has chosen to deprive the petitioner from electric supply by temporarily disconnecting the electricity to the premises-in-question surreptitiously, after having transferred the electric meter in his own name, in order to achieve by

indirect means the eviction of the petitioner, which the respondent no.4 cannot get directly by lawful means.

- 22.** In such view of the matter, the transfer of the electric meter in the name of the private respondent no.4 behind the back of the petitioner, who was the previous consumer, was illegal.
- 23.** Accordingly, W.P.A. No.18572 of 2021 is allowed, thereby directing the CESC Limited to re-transfer the electric meter, having Consumer No.62178021004, in the name of the petitioner. Upon such re-transfer, the CESC Limited shall restore electric supply to the electric meter upon compliance of all due formalities by the petitioner. Such re-transfer shall be effected by the CESC Limited as expeditiously as possible, preferably within a fortnight from date.
- 24.** The electric supply shall be restored to the said meter thereafter, within a week upon compliance of all due formalities in that regard by the petitioner.
- 25.** The parties shall act on the server copy of this order without insisting upon prior production of a certified copy.
- 26.** There will be no order as to costs.
- 27.** Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)