

24th December,
2021
(AK)
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WPA 20255 of 2021

Arnapurna Hotel and others
Vs.
CESC Limited and others

Mr. Sekhar Pal
Mr. Mobakshar Ishan
...for the petitioners.

Mr. Sanjay Mukherjee
...for the respondent no.7.

Mr. Debanjan Mukherjee
...CESC Limited.

Learned counsel for the petitioners submits that despite the petitioners being in occupation of a hotel, which is run by the petitioners, the CESC Limited is sitting tight over an application of the petitioners for giving a new connection to the said hotel.

Learned counsel for the CESC submits that the petitioners have requested a 'service' connection. In view of the fact that one such connection is already existed at the same premises, a further connection may cause safety hazards.

That apart, if a commercial connection has to be given to the premises, it has to be given from the existing electric meter box position.

Learned counsel appearing for the private respondents argues that the petitioners are encroachers on the footpath in front of the entry to the private respondent's residence.

Such encroachment being unlawful and a civil suit pending in such connection at the behest of the private respondents, it is contended that the writ court ought not to grant the relief as sought in the present writ petition.

Learned counsel further contends that on August 6, 2019 *WP 13832 (W) of 2019*, another writ petition filed by the same petitioners in respect of the same cause of action had been withdrawn without any leave to file afresh on the same cause of action.

As such, learned counsel argues that the bar, as envisaged in order XXIII of the Code of Civil Procedure, is squarely applicable on principle to the present writ petition.

As far as the second contention of the private respondents is concerned, the cause of action of the petitioners is their alleged suffering due to the electric connection being withheld.

Since such cause of action arises day to day and is *de die in diem* in nature, the principles of Order XXIII of the Code cannot be attracted.

As regards the contention of the petitioners, that their application is not being dealt with by the CESC authorities, the objection raised by the CESC authorities is valid in law and fact, since a second supply of service connection to the same premises may create fire hazard and other safety issues. However, there is no bar to the petitioners to apply for a commercial connection to their hotel.

Accordingly, WPA 20255 of 2021 is disposed of, granting liberty to the petitioners to apply afresh for a new commercial electric connection at their hotel within a week from date.

If such an application is made, the CESC shall hold a further inspection, if necessary, for the purpose of ascertaining the feasibility of such connection.

Upon such inspection, if necessary, the CESC shall give such new commercial connection to the petitioners, subject to compliance of all due formalities, at the existing meter board position of the premises.

The private respondents shall not create any hindrance thereto.

In the event any hindrance is created, the CESC personnel shall be at liberty to approach the local police station for adequate police help in that regard.

If so approached, the police shall grant appropriate help to the CESC personnel for such purpose at the cost of the petitioners.

It is, however, made clear that, by virtue of the new electric connection, if given to the petitioners, no special equity will be created or right conferred in favour of the petitioners.

The present order shall be subject to any order, if passed by the Civil Court in respect of the new connection of the petitioners.

In the event such question is raised before the civil court, the said court will decide the same independently

on its own merit without being influenced by any of the observations made herein.

The parties as well as the police authorities shall act on the written communication of the learned Advocates for the parties, coupled with server copy of this order, without insisting upon prior production of a certified copy thereof.

There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)