

ORDER

OD-7

APOT/216/2021
WITH
WPO/1103/2021
IA NO: GA/1/2021
IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

ATUL SHAH AND ORS.
VERSUS
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
AND
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
DATE : 24TH DECEMBER, 2021.

[Via Video Conference]

APPEARANCE:

Mr. Raghunath Chakraborty, Advocate
Mrs. Sonali Ghosh Basu, Advocate
Mrs. Sonali Sengupta, Advocate
.....for the appellants.

Mr. Alok Kumar Ghosh , Advocate
Mr. Subhrangsu Panda, Advocate
.....for the KMC.

Ms. Aparajita Rao, Advocate
.....for the CESC.

Mr. Mainak Bose, Advocate
Mr. Amitabh Ray, Advocate
Mr. Ankur Jain, Advocate
.....for the Landlords.

Mr. Debasish Ghosh, Advocate,
.....for the State.

The Court:- This appeal is at the instance of the writ petitioners challenging the order dated 20th December 2021 in WPO/1103/2021 whereby the Learned Single Judge has directed the KMC to file the report by a structural engineer empanelled under the KMC.

Submission of the learned counsel for the appellants is that there are 65 tenants residing in the premises in question and no notice in terms of Clauses 4.3.1 and 4.3.2 of the West Bengal Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2007 [for short, 'the 2007 Regulations'] was given to the appellants before disconnecting the electricity. Hence, the appellants are

entitled to at least temporary connection till the writ petition is decided by the Learned Single Judge.

Opposing the prayer, learned counsel for the KMC has submitted that only three petitioners have approached and that the building is in dilapidated condition and a part of it had fallen resulting in death of some person and that the appellants have not challenged the main order of the Learned Single Judge dated 13th December 2021 calling for the report from the structural engineer of the KMC. Therefore, consequential order cannot be challenged.

Learned counsel for the electricity company has drawn the attention of this Court to Clause 4.3.4 of the 2007 Regulations and has submitted that in emergent circumstances, no notice is required. She has also informed that out of the three appellants, only one of them is a consumer and the other two appellants are not the consumers as per record of the electricity company.

Learned counsel for the landlords has also opposed the appeal submitting that the appellants have no locus and the writ petition is not maintainable and the appellants are not the tenants and the prayer for stay was not even pressed before the Learned Single Judge.

Having examined the records, we have noticed that the Learned Single Judge by the order dated 13th December 2021 had called for the report from the empanelled structural engineer of the KMC. This order is not under challenge in this appeal. The appellants have challenged the order dated 20th December 2021 whereby the Learned Single Judge has found that the report submitted was by one of the structural engineers, who was son of one of the KMC officials, and therefore directed the KMC to file a report by structural engineer empanelled under the KMC who is not related by blood or otherwise in any manner to any of the KMC officials. Such a direction of the Learned Single Judge does not suffer from any error. The impugned order does not reflect that any prayer was made by the appellants for grant of interim relief relating to temporary connection before the Learned Single Judge. Therefore, if the appellants are interested in any such interim relief, then they have a remedy to file an appropriate application

before the Learned Single Judge. Even otherwise, so many disputed issues have been raised before this Court which, in the opinion of this Court, can be properly dealt with by the Learned Single Judge. Record further reflects that the writ petition is pending and has been fixed for 10th January 2022. Thus, finding no reason to interfere with the order of the Learned Single Judge, we dismiss the appeal, however, with liberty to the appellants to file an appropriate application for interim relief seeking temporary electricity connection before the Learned Single Judge.

(PRAKASH SHRIVASTAVA, C.J.)

(RAJARSHI BHARADWAJ, J.)

sm / s.kumar