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10.02.2022.
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W.P.A. No. 36 of 2022
with
IA No. C.A.N. 1 of 2022
(Via Video Conference)

Mina Nayak
-vs.-
CESC Limited & Ors.

Mr. Bikram Banerjee,
Mr. Sudipta Dasgupta,
Mr. Arkadeb Biswas,
Ms. Dipa Acharyya
...for the applicant

Mr. Bidyut Kumar Halder,
Mr. Indranil Halder
...for the writ petitioner

Ms. Sreemoyee Mitra
...for the CESC Limited

In Re.: C.A.N. 1 of 2022

Learned counsel for the applicant submits that patent untruth was pleaded in the writ petition for obtaining the order under recall. In paragraph 2 of the writ petition, it is stated that the writ petitioner is a tenant of the premises-in-dispute for more than fifty years, whereas the affidavit supporting the writ petition clearly indicates that the writ petitioner is only 48 years old. That apart, learned counsel for the applicant submits that the writ petitioner is not a lawful occupier of the premises. Upon query of Court, learned

counsel for the applicant contends that it may be that the writ petitioner's father is a tenant in respect of the premises.

Be that as it may, as admitted by the applicant, also upon query of Court, no eviction suit is pending against the writ petitioner or the father of the petitioner at all.

As such, it cannot even be said that the writ petitioner, who claims to be a tenant in respect of the premises and is undoubtedly in occupation of the premises, is not entitled to get electric connection. Although the applicant argues that the writ petitioner is an unlawful occupant of the premises, even in the event an eviction suit is filed against a lawful tenant, the tenant remains a statutory tenant under the landlord under the rent control laws and cannot be relegated to a position of trespasser or unlawful occupier. Although the question of the petitioner's tenancy may be in doubt in view of the dispute raised by the applicant and the apparently erroneous submissions made in the writ petition, such fact by itself cannot disentitle the writ petitioner to the right to have electric connection at the premises, which she is

occupying, within the purview of Section 43 of the Electricity Act, 2003.

As far as the claim of dues allegedly payable by the writ petitioner to the landlord/applicant is concerned, the writ petition is not the appropriate proceeding for seeking such remedy, since it is always open to the landlord to approach the appropriate forum or the competent civil court for getting the said relief.

The only question which arose for consideration in the writ petition was whether the writ petitioner is entitled to get electric connection at the premises of which she is in occupation and claims to be a tenant. There being no doubt as to the occupation of the petitioner and there being nothing shown, even *prima facie*, from the records to indicate that the petitioner was a trespasser, it cannot be said that the order under recall was passed without jurisdiction or that any error apparent on the face of the record crept into the order.

In such view of the matter, there is no scope of recalling the order passed in W.P.A. No. 36 of 2022.

Accordingly, C.A.N. 1 of 2022 is dismissed on contest without, however, any order as to costs.

Needless to say, the electric connection in favour of the writ petitioner shall not create any special equity or right in favour of the writ petitioner.

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

(Sabyasachi Bhattacharyya, J.)