

21st February,
2022
(AK)
18

WPA 267 of 2022

(Via Video Conference)

Parwej Alam
Vs.
CESC Limited and another

Mr. Bidyut Halder
Mr. Indranil Halder

...for the petitioner.

Mr. Rajiv Lall

...for the CESC Limited.

Learned counsel for the petitioner submits that the petitioner, being an occupier of the building-in-question situated at 119, Keshab Chandra Sen Street, Kolkata-700009, P.S.- Amherst Street, is entitled under Section 43 of the Electricity Act 2003 to have electric supply to the premises.

However, despite having applied for such connection, the CESC Limited is sitting tight over the matter.

It is further contended by learned counsel for the petitioner that it is not for the CESC Limited to enter into the question of the purported lawfulness of the occupation of the petitioner, as long as the petitioner is in occupation of the premises.

Learned counsel appearing for the CESC Limited, however, points out to several incorrect statements made in the writ petition itself.

First, he points out that the petitioner stated in paragraph no.2 of the writ petition categorically that the petitioner is the owner of the said premises.

However, the photocopy of a municipal tax receipt annexed as annexure-P1 to the writ petition clearly shows that the same stands in the name of one Msmt. Hazra Begum.

Although a photograph has been annexed at page-10 of the writ petition which indicates that people are residing at some of the floors of the said building, the said photograph is insufficient to establish the petitioner's connection with the building.

As rightly pointed out by learned counsel for the CESC Limited, the petitioner stated in paragraph no.6 of the writ petition that after the CESC authority by letter dated July 1, 2021 informed the petitioner to produce certain documents, the petitioner complied with the said instruction. However, it is borne out by the records and the submission made in court that the petitioner does not have a sanction plan of the building at all.

In fact, the letter dated July 1, 2021, annexed at page-11 (Annexure-P3) to the writ petition clearly shows that the CESC Limited, inter-alia, asked for copies of the sanction plan of the building with details.

Since the same was not furnished and the petitioner is now doing a *volte face* inasmuch as the petitioner categorically contends before court that the petitioner does not have a sanction plan of the building, the entire credibility of the writ petitioner is lost.

It is further pointed out by learned counsel for the CESC Limited, which appears to be correct on a perusal of the affidavit-in-opposition of the CESC Limited, that on December 28, 2020, an officer of the Amherst Street Police Station wrote to the Manager, CESC Limited indicating the pendency of one Amherst Street P.S. Case No.247 dated November 10, 2020 under Section 401(A) of the KMC Act on the basis of complaint of one Saumitra Bhaumik, Assistant Engineer (C), Building Department, Borough-IV and V, KMC regarding construction work without any sanction plan from the KMC authority at the premises-in-question.

In fact, the police further communicated that for the purpose of investigation into the case, the CESC Limited was to let the police station know as to whether the PR/owner has taken any permission from the CESC's department for constructional work at the said premises.

At page-10 of the affidavit-in-opposition, the reply given by the CESC Limited to the aforesaid communication has also been annexed, which clearly shows that no application for temporary construction

purpose was received at the end of the CESC for the said premises.

In fact, at page-11 of the affidavit-in-opposition, a communication by the CESC Limited to the present petitioner is annexed, which indicates that the CESC was required to carry out an inspection at the address of the premises on the ground as given therein.

At page-12 of the affidavit-in-opposition, a purported communication by the present writ petitioner to the District Engineer, CESC Ltd. (N.R.O), although not disclosed in the writ petition, has been annexed by the CESC Limited, which shows, *inter alia*, the load break-up of the G+4 building situated at the premises-in-question.

At page-13 of the affidavit-in-opposition, a purported further communication by the writ petitioner to the District Engineer has been annexed where the petitioner, in unambiguous terms, admits that there is no building plan and hence, the petitioner was unable to produce sanctioned building plan but that the petitioner had tax bill and registered deed with him.

In fact, in the series of purported rent receipts, annexed with the affidavit-in-opposition, which were allegedly produced by the petitioner before the CESC Limited, the petitioner's name does not find place anywhere.

There is no paper, produced either by the petitioner or the CESC Limited, to indicate that any document

stands in the name of the petitioner in respect of the premises.

Although it is now alleged that Msmt. Hazra Begum Sahiba, the landlord, is the mother of the petitioner, neither did the said lady filed the application for electric connection, nor was any document produced or averment made in connection with the writ petition by the petitioner to indicate/establish the connection between her and the petitioner.

In fact, at page-19 of the affidavit-in-opposition, a letter dated August 24, 2021 purportedly written by the CESC Limited to the writ petitioner has also been annexed, where the CESC reiterated that the petitioner was to submit sanctioned building plan of the aforesaid building before they decide their next course of action. The pendency of the police case under Section 401(A), KMC Act, 1980 was also indicated in the said communication.

At page-17 of the affidavit-in-opposition, the CESC Limited has annexed a purported Municipal License for Professions, Trades and Callings issued in the name of one M/s Pasupati Auddy and Bros., the connection of which entity with the petitioner has not been either pleaded or proved by the petitioner.

In paragraph no. 5 of the affidavit-in-reply, the petitioner has stated that although the petitioner denies the statements of fact made by the CESC Limited in

paragraph no.5 and its sub-paragraphs of the affidavit-in-opposition, the petitioner admits that the police case and KMC proceedings are matters of record and further admits that the building was constructed without any sanctioned plan.

The petitioner went so far as to plead that it is not the “headache” of the CESC Limited whether the building is sanctioned or not.

The petitioner, in paragraph no.6 of the reply, has stated that the municipal tax receipt of the building stands in the name of the petitioner’s mother. However, such allegation is made without any supporting document, that too, for the first time in the affidavit-in-reply.

In view of the aforesaid circumstances, it cannot but be found that the petitioner blatantly resorted to incorrect statements to deliberately mislead the court.

At this juncture, learned counsel for the petitioner submits that the petitioner is agreeable to produce title deed in the name of the petitioner in respect of the premises-in-dispute.

However, since the hearing is at an advanced stage and substantially concluded, such opportunity cannot now be given to the petitioner to rectify the petitioner’s case at this belated stage, since no such document or deed was ever produced before the CESC Limited or

annexed to the pleadings of the petitioner by way of the writ petition or the affidavit-in-reply at any point of time.

Giving such opportunity at this stage would merely amount to giving a premium to a dishonest litigant, who has approached this court with unclean hands, making blatantly false statements on oath.

Moreover, although Section 43 of the 2003 Act confers a right on an “occupier” of the premises to have electric connection, it is well-settled by various judgments of this court that although such “occupation” is not required to be “lawful occupation”, the applicant of the new connection should be in “settled possession” of the property-in-question to be entitled to get an electric connection.

In the present case, however, the petitioner has failed to establish by a single scrap of paper either in the pleadings before this court or in the documents produced before the CESC Limited, to establish the petitioner’s possession in respect of the premises, let alone settled possession.

Thus, there cannot arise any question of Section 43 being attracted to the present case, even as per the language of Section 43, as interpreted by various decisions of this court.

Hence, WPA No.267 of 2022 is dismissed on contest with costs of Rs.10,000/- payable by the petitioner to the respondents, either directly or through the learned

Advocate-on-record appearing for the respondents in this court, within a week from date.

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

(Sabyasachi Bhattacharyya, J.)