

AD-15
Ct No.09
28.09.2022
TN

WPA No. 2896 of 2020
IA No: CAN 1 of 2021

Haji Mumtaz Khan alias Mumtaz Khan, since
deceased, his heirs and legal representatives,
Shabana Parveen and another
Vs.
The General Manager, Metro Railway and others

Mr. Asit Baran Raut,
Ms. Ishita Raut

.... for the petitioners

Mr. Subhankar Chakraborty,
Ms. Ruchira Manna

.... for the Metro Railways

Mr. Soumyajit Ghosh

.... Special Officer

Learned counsel for the petitioners contends that the petitioners were ousted from their previous occupation as owners during a proposed construction work by the Metro Railway Authorities in the locality. Such ouster was in the year 1993. Subsequently, even after the construction of the metro railways is completed, the Metro Railways, allegedly, is not rehabilitating the petitioners to a habitable, proper accommodation as per the agreement entered into initially between the Metro Railway Authorities and the petitioners and other residents.

It is submitted that since the Metro Railway Authorities used to provide electricity connection to

the petitioners initially from their service connection, the same position may be restored by a direction on the Metro Railway Authorities to restore the electricity connection of the petitioners at their original accommodation.

Learned counsel places reliance on the exception filed by the petitioners to the Special Officer's report and contends that the original accommodation is still in an uninhabitable condition and, as such, the petitioners do not have the option of returning there. Moreover, the Metro Railways are backing out from their initial undertaking to restore back the possession of the petitioners at the original accommodation.

Learned counsel appearing for the Metro Railway Authorities submits that it is beyond the authority and jurisdiction of the Metro Railway Authorities to give electricity connection to the petitioners and the petitioners have to apply before the appropriate authority in that regard. It is submitted that the Metro Railways are ready and agreeable, as well as have already done, everything within their power to facilitate such supply to the petitioners. However, since the petitioners have not yet made any application for getting such connection

to their original accommodation, the Metro Railways have nothing further to do in the matter.

Upon hearing learned counsel and going through the materials on record *prima facie*, it is evident that it is not the Metro Railway Authority but the Distribution Licensee concerned, before whom the petitioners have to apply for an electricity connection. In the event the Metro Railway Authorities disrupted such endeavour or refused to extend cooperation, if required by the Distribution Licensee, in that event there could have been scope of granting relief to the petitioners to some extent against the Metro Railway Authorities. However, it is beyond the scope of the present writ petition, keeping in view the manner in which its prayers have been couched, to grant any relief to the petitioners.

Relief (a) sought in the writ petition seeks a writ in the nature of mandamus directing the respondents-metro railway authority to “restore” supply of electricity forthwith to the petitioner’s alternative place of residence provided by them at premises No. 36, Belgachia road, Kolkata – 700037 and also directing them not to create any disturbances in any manner whatsoever to the peaceful possession of the petitioner at the said alternative premises;

Prayer (b) seeks a writ in the nature of Certiorari directing the respondent-metro railway authority to certify and transmit before this court all the relevant records of the instant case so that “conscionable justice” can be administered by quashing the impugned order, if there be any;

The rest of the prayers pertain to consequential reliefs and are not directly germane for the present discussion.

It is evident from even a cursory perusal of the initial undertaking given by the Central Government, which facilitated the construction vis-à-vis the Metro Railway Authorities, that the alternative accommodation was arranged to provide the persons affected by the construction work of the metro railways with such temporary alternative accommodation, free of costs, as considered suitable by the Central Government or to pay any amount which is in its opinion sufficient, to procure a temporary alternative accommodation.

However, in the present case, despite other residents having returned to their original habitations on substantial completion of the construction of the relevant work by the Metro Railway Authorities, it is the petitioners who seek to prolong their stay at the alternative accommodation in the garb of this writ

petition, free of costs, taking undue advantage of the initial agreement entered into with the Metro Railway Authorities.

It may be mentioned here that an effort was made in the matter to resolve the dispute amicably and the Metro Railway indicated that it would be ready to extend all cooperation.

However, now the petitioners have taken a plea that the original accommodation of the petitioners, to where the petitioners are to return, is not in a habitable condition. It is beyond the scope of the writ court to decide, on the basis of assessment of detailed evidence, as to whether there was any negligence, if at all, on the part of the Metro Railway Authorities in the petitioners not being able to return to their original accommodation.

That apart, it has to be ascertained as to whether the building-in-question is habitable and, if not, due to whose lack of efforts or negligence, in order to grant any relief to the petitioners in respect of restoration of the petitioners' possession.

For the present, I find nothing on record to indicate that the Metro Railway Authorities are standing in the way of the petitioners returning to their original accommodation and to apply for electricity connection there.

However, in the event the petitioners persist with the allegations that proper habitable accommodation has not been returned to the petitioners, in violation of any Government Circular or any undertaking given by the Central Government or the Metro Railway Authorities, it is open to the petitioners to approach a competent civil court for claiming adequate relief, including compensation, if the petitioners so chooses, for the petitioners not being able to return to their original premises.

Inasmuch as the reliefs sought in the present writ petition are concerned, it is beyond the scope of any court of law to direct the Metro Railway Authorities to give electricity connection from their own service connection to third persons like the petitioners, even if the petitioners had been enjoying such connection at any point of time. The simple reason for the same is that such connection, even if given or previously used by the petitioners, was palpably unauthorized and attracts punishment under the Electricity Act, 2003 and the relevant Regulations framed by the West Bengal Electricity Regulatory Commission (WBERC).

Since there are penal provisions for such unauthorized use, it is not for the court of law to make such illegal direction on the Metro Railway

Authorities, thereby seeking to validate an otherwise illegal and unauthorized use of electricity by the petitioners. Since all efforts at reconciliation have failed in the matter and as the petitioners have not yet returned to the premises on some pretext or the other and have failed till date to apply for any electricity connection at the premises, there arises no question of directing the Metro Railway Authorities, which is not a distribution licensee, to give such connection to the petitioners.

Hence, there is no scope for interference in the writ petition.

Accordingly, WPA No. 2896 of 2020 is disposed of by granting liberty to the petitioners to approach the appropriate civil court for remedy with regard to the allegations made by the petitioners in respect of the Metro Railways having resiled from its purported undertaking initially given to return habitable accommodation to the petitioners.

If so filed, the civil court shall decide on the said dispute in accordance with law upon hearing all interested parties without being influenced in any manner by any of the observations made herein.

The petitioners will be at further liberty to apply for electricity connection at the original accommodation of the petitioners once the petitioners

return to such accommodation. However, it is also made clear that the continued possession of the petitioners at the alternative accommodation temporarily granted to the petitioners by the Metro Railways is not being validated *per se* by anything which has been observed in the present order.

At this juncture, after the arguments are over, the learned Special Officer, appointed previously by this court, submits that certain allegations have been made against the said learned Special Officer by the Metro Railway Authorities in the pleadings made in a supplementary affidavit.

However, since this court has found nothing on record to establish the veracity of such allegations, such allegations against the Special Officer are expunged from the records.

In view of disposal of the writ petition as above, IA No: CAN 1 of 2021 is also disposed of.

There will be no order as to costs.

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.)