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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 5753 of 2022

Raghunath Dewan & Anr.

-vs.-

The West Bengal State Electricity
Distribution Company Limited & Ors.

Mr. Kanai Lal Mondal,
Mr. Rajat Kumar Dhar
...for the petitioners

Dr. Madhusudan Saha Roy
...for the respondent no. 1

Mr. Rajiv Lall
...for the CESC Limited

Mr. Rama Prasad Sarkar,
Mr. Bidhan Biswas
...for the State

Mr. Nurul Arefin,
Mr. Rahul Singh
..for the respondent nos. 4 and 5

It is rightly pointed out by learned counsel appearing for the respondent no. 1 that the said respondent has been unnecessarily impleaded in the matter, to which submission, learned counsel appearing for the petitioners, in his usual fairness, consents.

Hence, on the prayer of learned counsel appearing for the petitioners, liberty is granted to the learned Advocate-on-Record for the petitioners to carry out consequential amendment in the cause title of the

writ petition during the course of the day, to expunge the respondent no. 1 from the cause title of the writ petition.

Since it is rightly contended by learned counsel for the CESC Limited that two separate and individual causes of action of each of the writ petitioners have been joined in a single writ petition, the petitioners are directed to put in additional court fees, commensurate with the balance amount, as payable for two separate applications under Article 226 of the Constitution of India, by tomorrow.

Learned counsel appearing for the petitioners submits that the petitioners had filed a civil suit against the predecessor of the private respondents and others. The said suit was instituted primarily for declaration that a transfer deed in favour of the private respondents' predecessor-in-interest was null and void. Although the trial court dismissed the suit, the first appellate court reversed the said judgment, which came up to a second appeal, which was, in turn, dismissed for default.

Learned counsel appearing for the petitioners produces a photocopy of an order which shows that a subsequent application for restoration of the second appeal was also dismissed for non-prosecution. As such, the decree has attained finality as of today.

In view of the first appellate court's order, the private respondents do not have any legal right to stay at the property.

However, the transfer of the existing meter in the name of the petitioners cannot be granted, since the private respondents are still in physical occupation of the said property.

Moreover, learned counsel appearing for the CESC Limited points out that previously, on the impression given by the writ petitioners that there was no objection by the erstwhile consumers, the electricity meter was transferred in the name of the petitioners. Subsequently, however, it was discovered that the erstwhile consumers, that is, the private respondents, had serious objection to such transfer, upon which the transfer in the name of the petitioners was negated and the electricity meter now stands again in the name of the private respondents.

It is further submitted by learned counsel for the CESC Limited that the connection is live even at the present moment and electricity charges are being paid by the consumers.

Learned counsel appearing for the private respondents opposes the prayer for transfer of name as well as the alternative prayer of the petitioners for getting new electricity connection, for which also a representation was given by the petitioners, on the

ground that the private respondents are at present in physical occupation of the property.

Although learned counsel appearing for the private respondents submits that the petitioners have no *locus standi* to claim possession in the property merely on the basis of the decree passed in the earlier suit, it is also true that the decree does not disprove the petitioners' possession either.

In any event, it is for the Distribution Licensee to decide on the relevant yardsticks in the event a proper application in appropriate format is made by the petitioners for a new electricity connection in the name of the petitioners.

Hence, W.P.A. No. 5753 of 2022 is disposed of by granting liberty to the petitioners to make a fresh application, in appropriate format, for getting a new electricity connection in their names at the premises-in-dispute.

If so applied, the CESC Limited shall consider the said application, subject to the compliance of all formalities by the petitioners, and if found feasible by the CESC Limited, the CESC Limited shall expeditiously give such new connection to the petitioners.

The above order shall be conditional upon the petitioners putting in additional court fees by tomorrow.

It is, however, made clear that the rival contentions made by learned counsel for the petitioners and the private respondent nos. 4 and 5 have not been gone into by this Court on merits.

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 of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)