

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 7126 of 2021

Basanti Sardar & Anr.
Vs.
CESC Limited & Ors.

Mr. Sanjib Seth
... for the petitioners

Mr. Debanjan Mukherjee
...for the CESC Limited

Mr. Wasim Ahmed,
Mr. Sk. Md. Masud
....for the State

Mr. Purnasish Gupta,
Ms. Mary Datta
...for the respondent nos. 3 to 5

Learned counsel appearing for the petitioners contends that an electricity connection has been given to the added private respondent, one Ula Sub Centre, which is an instrumentality of the State Government, thereby violating an order of injunction passed by a competent civil court.

It is submitted that although a civil suit is pending against the respondent nos.3 to 5, the said respondent no.3 has, in order to bypass the order of injunction granted by the civil court, given tenancy to the Ula Sub Centre which, in turn, has taken the electricity connection.

It is, thus, submitted that the violation was committed within the full knowledge of the respondent nos.3 to 5 and in order to obviate the order of injunction passed against the respondent no.3.

Learned counsel appearing for the respondent nos.3 to 5 submits that although an injunction order was passed by the civil court, the same was granted in the form of *status quo*. The *status quo* was in respect of the nature, character and possession of the writ petitioners' property, which is the schedule 'A' property in the suit.

However, it is argued that such *status quo* order has not been violated in any manner by the act of giving electricity connection to the added respondent, since the electricity connection has been taken not over the land of the respondents but over a different land.

Learned counsel appearing for the CESC Limited submits that the private respondents do not have a cause of action, as such, since the connection was given to the Ula Sub Centre, that is, the added respondent. As such, there does not arise any question of violation of the injunction order passed against the respondent no.3. That apart, it is submitted that the CESC Limited was or is not a party to the said suit.

As such, the CESC Limited is not bound in any manner by the injunction order at all.

Heard learned counsel for the parties.

The order of injunction, relied on by the writ petitioners, was passed by a competent civil court in Title Suit No. 53 of 2012 on March 21, 2012. It is recorded in the ordering portion of the same that the temporary ad interim injunction as prayed for was thereby allowed *ex parte* in terms of observations made thereinabove.

It was further observed that both the parties to the suit were thereby directed to maintain *status quo* in respect of the nature, character and possession of the 'A' schedule property as on that date till the next date.

It is nobody's contention that the electricity connection has not been given to the 'B' schedule property in the suit, which admittedly belongs to the private respondent nos.3 to 5.

The bone of contention is whether the injunction order passed by the court tantamounts to an order of injunction restraining the CESC Limited from giving the electricity connection to the respondents, be it the respondent nos.3 to 5 or the added respondent.

A plain reading of the observations made in the injunction order, to which the ordering portion was subjected to in the order itself, reveals that the ad interim injunction sought by the plaintiffs/present writ petitioners was to restrain the defendants (respondent nos.3 to 5 herein) from taking electricity connection through and over the 'A' schedule property and also

from raising any construction over the 'B' schedule property.

Inasmuch as the *status quo* order is concerned, there cannot be any doubt that *status quo* in respect of the nature, character and possession cannot, in any way, be violated by merely taking an electricity line over the property.

However, inasmuch as the injunction order is concerned, the same also grants the ad interim prayer made by the writ petitioners (as plaintiffs), which categorically restrains the defendants from taking electricity connection through and over the 'A' schedule property, that is, the petitioners' property.

The legality and veracity of the order, undoubtedly, is suspect inasmuch as the provisions of Section 43 of the Electricity Act, 2003 and Article 21 of the Constitution of India, read in conjunction, give the right to an occupant of a property to have an electricity connection in his/her own name.

However, sitting in writ jurisdiction, this court does not have the jurisdiction to decide on the veracity or legality of such order passed by a competent civil court. Since the respondent nos. 3 to 5 have not yet preferred any appeal, and the said order apparently is still subsisting, there is no scope for the writ court going into the question of the legality thereof. In any event, the fact remains with the injunction order,

unless challenged, remains on the records of the civil suit.

Coming to the next component of the arguments of the parties, it is seen that the electricity connection-in-question was admittedly given to the added respondents.

Despite service of notice, none appears for the said added respondent. An affidavit-of-service filed in that context today has already been kept on record.

Be that as it may, since no order was passed by the civil court against the added respondent in any form whatsoever, this court cannot go into the question of whether the private respondent nos. 3 to 5, using the Ula Sub Centre as a scapegoat, have violated the injunction order-in-question by taking electricity connection.

As it transpires from the face of the records, the entire cause of action, if any, could have been against the added respondent, that is, the Ula Sub Centre. In the present case, since the said added respondent is not a party to any suit between the parties and/or does not suffer from any order of injunction, it cannot be argued that the injunction order was flouted in any manner by giving electricity connection to the added respondent.

Inasmuch as the factual issue is concerned, as to whether the electricity connection was actually taken

over or through the schedule 'A' property in the suit, that is, the property of the present writ petitioners, the same cannot be decided within the limited periphery of the writ petition, since arguable questions of fact have to be decided on consideration and assessment of materials for arriving at a conclusion in that regard.

In such view of the matter, particularly since no application for contempt/implementation of the injunction order has yet been filed before the trial court which is taking up the civil suit, it would be premature to rush to any conclusion on that score.

Since the appropriate authority within the contemplation of the Works of Licensees Rules, 2006, is the concerned District Magistrate, it would only be suitable if the dispute raised by the petitioners is referred to the District Magistrate for ascertaining whether or not the electricity connection has been taken over the property of the petitioners.

Accordingly, WPA No. 7126 of 2021 is disposed of by granting liberty to the petitioners to approach the concerned District Magistrate having territorial jurisdiction over the area-in-question with the dispute as raised in the present writ petition, pertaining to the allegation that the electricity connection-in-question has been given over the property of the writ petitioners.

The District Magistrate, upon such reference, shall decide the issue in accordance with law upon

giving adequate opportunity of hearing to all concerned, as expeditiously as possible, preferably within eight weeks from the date of such reference being made to the District Magistrate.

It is, however, made clear that this court has not entered into the merits of the allegations and counter-allegations of the parties in any manner whatsoever, and it will be open to the civil court and the District Magistrate to decide the respective *lis* pending before them duly in accordance with law and independently, without being influenced in any manner by any of the observations made herein.

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.)