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03.04.2023.
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W.P.A. 7921 of 2022
with
IA No. C.A.N. 1 of 2022

Abdul Samad Khan
Vs.
CESC Limited & Ors.

Mr. Javed K. Sanwarwala,
Mr. Shariq A. Sanwarwala
...for the applicant

Mr. Debanjan Mukherjee
...for the CESC Limited

In Re.:IA No. C.A.N. 1 of 2022

Learned counsel appearing for the applicant submits that the applicant is an adjacent owner in the neighbourhood of the original writ petitioner. However, without impleadment of the present applicant, the writ petitioner obtained an order from this Court dated May 17, 2022 in W.P.A. No. 7921 of 2022 for giving an electricity connection to the writ petitioner. However, taking undue advantage of the said order, the CESC Limited gave electricity connection to the writ petitioner by laying cable under the exclusive property of the present applicant. It is submitted that, hence, the present application for recall has been taken out.

Despite service, none appears for the writ petitioner, although the present applicant and the CESC Limited are represented through counsel.

Even a mere perusal of the order dated May 17, 2022 passed in W.P.A. No. 7921 of 2022 indicates that the present applicant was not a party to the said writ petition and, as such, the order does not bind the present applicant in any manner whatsoever. That apart, the disputes sought to be raised in the said writ petition were between the writ petitioner therein and the private respondent therein, who was alleged to be a tenant, in which context the direction was passed in the writ petition directing the CESC Limited to give a new service connection to the writ petitioner and consequential directions were issued.

Hence, there is nothing in the said order, recall of which has now been sought, to indicate that any specific route was designated for giving electricity connection to the writ petitioner therein, let alone there being any direction for giving such connection through the exclusive property of the present applicant.

Learned counsel appearing for the CESC Limited submits that there is a dispute as regards the title of the property through which connection was given and, as such, the matter ought to be referred to the concerned District Magistrate.

Since the present allegations of the applicant are on the ground of encroachment and trespass on the applicant's exclusive property by the CESC

Limited and the writ petitioner in W.P.A. No. 7921 of 2022 subsequent to the order dated May 17, 2022, there is no occasion for this Court to go into the said dispute in the present recall application. The same, if at all, furnishes a fresh cause of action to the present applicant for which it is open to the applicant to prefer an independent writ petition of his own.

In such view of the matter, IA No. C.A.N. 1 of 2022 is disposed of without interfering with the order dated May 17, 2022 passed in W.P.A. No. 7921 of 2022 in the light of the above observations.

However, it is made clear that the merits of the contentions raised by the present applicant have not been gone into by this Court at all and the present applicant will be at liberty to prefer a fresh writ petition on the new cause of action which has arisen for the applicant to prefer such challenge.

If so filed, the said writ petition shall be decided on its own merits 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.)