

AD. 5.
June 9, 2022.
MNS.

WPA No. 8422 of 2022

M/s Supriya Engineering Works and others
Vs.
CESC Limited and others

Mr. Uddipan Banerjee

...for the petitioners.

Mr. Om Narayan Rai,
Ms. Sumouli Sarkar

...for the CESC Limited.

Mr. Raghunath Chakraborty,
Ms. Amrita De

...for the respondent no. 3.

Learned counsel for the petitioners argued that the petitioners have been and are continuing as tenants in respect of the disputed property, first under the erstwhile landlord Leena Roy and thereafter, upon transfer of the ownership of the property, under the present respondent no. 3.

It is submitted by placing reliance on Annexures P1 and P2 at pages 12 and 13 of the writ petition that the said documents sufficiently evince the admission of the erstwhile landlord and the respondent no. 3 on that score.

By way of Annexure P3 to the writ petition at page 14, rent receipts have also been annexed by the petitioners to corroborate the petitioners' case of tenancy.

However, subsequently the petitioners came to know that the name of the petitioners in respect of the electricity meter at the premises had been transferred in favour of the respondent no. 3 without any consent of the petitioners.

Accordingly, the petitioners took out an objection before the CESC Limited. Hence, it is argued that the transfer of name was completely illegal.

Learned counsel for the CESC Limited produced, on the last occasion, a copy of the agreement of surrender of occupancy right, purportedly executed by the petitioners in favour of the respondent no. 3, whereby it was indicated that the petitioners are handing over possession of the tenanted premises in favour of the respondent no. 3.

It is submitted by learned counsel for the CESC Limited that the CESC Limited did not commit any irregularity and/or illegality in acting on such surrender agreement and transferring the name in respect of the electricity meter to that of the respondent no. 3.

Learned counsel appearing for the respondent no. 3 places reliance on the injunction order obtained by the respondent no. 3 by virtue of the order dated October 12, 2020 passed in Title Suit No. 885 of 2020. It is evident from a copy of the plaint of the said suit, handed over by learned counsel for the

petitioners, that the said suit is one for declaration that the plaintiff is the absolute owner and occupier in respect of the schedule noted property and consequential injunction. In the said suit, filed by the respondent no. 3, the petitioners contend that no case has been made out in respect of the electricity meter of the petitioners. As such, it cannot be said, according to the petitioners, that the said injunction order stands in the way of the petitioners' continuing to enjoy the electricity with the meter in their own name.

However, since a *prima facie* document was produced before the CESC authorities by way of a surrender agreement by the respondent no. 3 and the CESC Limited acted bona fide on the said document, it cannot be said that the CESC Limited perpetrated any sort of irregularity and illegality, since it was beyond the charter of the CESC Limited to take evidence and/or decide on the veracity of the said document and/or decide on the title and occupancy rights of the private parties.

As of today, the ad interim injunction stares at the face of the petitioners inasmuch as the Civil Court recorded therein that the respondent no. 3 herein is in *prima facie* possession in respect of the property-in-question and granted injunction against the present petitioners from disturbing the "peaceful

possession and enjoyment” of the plaintiff/respondent no. 3 in respect of the said property.

Moreover, a document of surrender of occupancy right, purportedly presented by the respondent no. 3 to the CESC Limited, is also on the records. Unless the writ petitioners enter appearance in the suit and take appropriate steps with regard to vacating the injunction order and/or contesting the injunction application and/or preferring an appeal against the said ad interim order, there is no scope of the writ court to enter into the merits of the claim and the counterclaim regarding the veracity of the surrender document and/or the basis of the order of the trial court.

Hence, WPA No. 8422 of 2022 is disposed of by granting the petitioners liberty to approach the civil court hearing Title Suit No. 885 of 2020 and take appropriate steps to vindicate the contentions made by the petitioners before this Court, both as regards the illegality of the injunction granted against the petitioner and the veracity of the document of surrender purportedly produced by the respondent no. 3 before the CESC Limited.

It is made clear that the respective rights and contentions of the petitioners and the respondent no. 3 have not been gone into by this Court and it will be open to the civil court to decide the issue

independently without being influenced in any manner by any of the observations made herein.

Since affidavits have not been invited from any of the respondents, it is deemed that the respondents have not admitted any of the allegations made in the writ petition.

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.)