

M/L. 47.
November 7, 2022.
MNS.

WPA No. 12513 of 2021

Promila Das
Vs.
C.E.S.C. Limited and others

Mr. Manas Kumar Das

... for the petitioner.

Mr. Suman Ghosh

...for the CESC Limited.

When the matter is called on for hearing, none appears for the private respondent nos. 5 and 6, although the petitioner and the CESC Limited are represented through counsel.

Learned counsel for the petitioner submits that the petitioner, who is an octogenarian lady, is being resisted from laying a pipeline under a common passage adjacent to her plot, to enable the CESC Limited personnel to give a new electricity connection to the petitioner.

Learned counsel for the CESC Limited submits that the CESC Limited does not have any objection in principle to give such connection but is not being able to do the same since the requisite pipeline has not yet been installed by the petitioner.

It transpires from the submissions of the parties that the matter pertains to a civil dispute as regards the commonality of the concerned passage, under which the pipe is sought to be laid for the purpose of giving electricity, and/or the exclusive occupation of the same by either the petitioner or the private respondents. In any event, a dispute in that regard went up to the District Magistrate, who washed off his hands on consideration that it was beyond the jurisdiction of the Magistrate to decide the ownership of the land.

In similar tune, it is beyond the scope of the writ court to decide ownership, as rightly pointed out by learned counsel for the CESC Limited.

The Magistrate further held, *inter alia*, that it appeared from the enquiry report that there is no alternative way to draw electricity line to the petitioner's premises, although she is enjoying a temporary connection of electricity since long from the other side of the road.

Be that as it may, despite the Magistrate having directed the CESC Limited to draw a service connection permanently through the existing temporary line, if possible, it is

categorically stated on behalf of the CESC Limited that proper installation of a pipeline has to be done by the petitioner to enable the CESC Limited to do so.

Since the disputes as regards the ownership and/or commonality of the passage-in-question have not been decided or canvassed before any competent civil court as yet, it is *de hors* the jurisdiction of the writ court to decide such issue prematurely and/or to grant a mandatory direction on the private respondents to permit the petitioner to install a pipeline for the purpose of taking electricity connection over the disputed property.

However, it is always open to the petitioner to approach the competent civil court having jurisdiction by filing a regular suit canvassing the nature and ownership of the property and the right of user of the petitioner at least for the purpose of using it as a common passage. The petitioner is also at liberty in law to approach the said civil court, in connection with such suit, if filed, to move for temporary relief for the purpose of enabling the petitioner to install the pipeline-in-question for the purpose of taking electricity connection.

It is premature for the writ court to decide the said issues or to arrive at any conclusion in that regard at this juncture.

WPA No. 12513 of 2021 is disposed of by granting liberty to the petitioner to approach the civil court for appropriate and temporary reliefs, as indicated above.

If so approached, the said Civil Court shall decide the issues in accordance with law upon giving an opportunity of hearing to all concerned, 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 with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)