

AD-20
Ct No.09
30.09.2022
TN

WPA No. 20512 of 2022
IA No: CAN 1 of 2022

Sri Biswajit Ghosh
Vs.
The West Bengal State Electricity Distribution
Company Limited and others

Mr. Soumyajit Ghosal

.... for the applicant/respondent no.5

Mr. Sujit Sankar Koley

.... for the WBSEDCL

In Re: IA No: CAN 1 of 2022

Learned counsel for the applicant moves this application for recall/modification.

It is submitted that in the order dated September 08, 2022, it was recorded that despite efforts by the petitioner, the landlord/private respondent could not be served in a proper manner.

It is further contended that it was also recorded in the said order dated September 08, 2022 that certain documents contained, according to the WBSEDCL, signatures of landlord in 'way leave' forms, which were recorded to be proof that the tenancy agreement had been executed on September 24, 2003.

Learned counsel for the present applicant, that is, the landlord, submits that the writ petition was

moved with unclean hands inasmuch as both the said averments were erroneous on facts. It is disputed that there were signatures of landlord in any sort of way leave form and/or that despite efforts by the petitioner, the landlord/private respondent could not be served in a proper manner.

Even upon service having been effected, none appears for the writ petitioner in the original writ application although the WBSEDCL is represented through counsel. The contentions made in the application are deemed to be denied, since no affidavits are invited.

It is seen from the records that, subsequent to the order dated September 08, 2022, vide order dated September 14, 2022, WPA No. 20512 of 2022 itself was dismissed as infructuous on the submission of learned counsel for the petitioner and the WBSEDCL that the electricity connection, which was the subject-matter of dispute in the writ petition, had been given in the meantime by the WBSEDCL to the petitioner.

In view of such subsequent dismissal of the writ petition as infructuous, no effective adjudication was made in the said writ petition. As such, none of the findings would or could operate as *res judicata* against the present applicant.

That apart, it is evident on the face of the record that the findings in the order dated September 08, 2022 were made on the basis of submissions made in court and were not findings of fact, which would be binding on the private respondent.

As such, there is no scope of recall of such previous order after the writ petition itself has been dismissed as infructuous.

Hence, IA No: CAN 1 of 2022 is disposed of with the above observations.

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.)