

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No.20845 of 2022

Mr. Arindam Sarkar
Vs.
CESC Limited & Ors.

Mr. Pingal Bhattacharyya
...for the petitioner

Mr. Debanjan Mukherjee
...for the CESC Limited

Mr. Jahar Dutta,
Mr. Bipin Ghosh
...for the State

Mr. Tirthankar
...for the respondent nos. 5 & 6

Mr. Tarique Quasimuddin,
Mr. Abbas Ibrahim Khan,
Ms. Meena Shabnam
...for the respondent no. 7

Learned counsel appearing for the petitioner cites two decisions, one by a coordinate Bench of this Court in *Dinabandhu Mallick vs. State of West Bengal & Ors.*, reported at (2009) 2 Cal LT 417 and the other by a Five-Judge Bench of the Supreme Court in *Shivdeb Singh & Ors. Vs. State of Punjab & Ors.*, reported at AIR 1963 SC 1909 for the proposition that even in a fresh writ petition, a Bench can interfere with a coordinate Bench order or its own order passed in a previous writ

petition in the event there is a grave and apparent error in the prior order.

It is submitted that, in the present case, pursuant to an order dated September 06, 2022 passed by this Court in W.P.A. No. 15672 of 2022, Calcutta Electric Supply Corporation Limited (CESC Limited) has given electricity connection to the private respondent, Sushma Jaiswal. However, such connection has been given from the tenanted portion of the present writ petitioner, who is another tenant, apart from Sushma Jaiswal, at the same premises under the same landlord. Learned counsel submits that taking advantage of an injunction order passed in the absence of the present writ petitioner by a competent civil court, the said electricity connection has been taken, thereby adversely affecting the tenancy rights of the present petitioner. As such, the petitioner was, on the face of it, a necessary party in the previous writ petition, but was deprived of impleadment in the said matter, thereby giving rise to an apparent error on the face of the order.

Learned counsel appearing for the petitioner, in unison with learned counsel appearing for the private respondents/landlords (respondent nos. 5 and 6), submits that the writ petitioner in the previous writ petition, that is, Sushma Jaiswal, perpetrated fraud by

placing forged documents before this Court for the purpose of establishing her case.

Learned counsel appearing for the private respondent no. 7 submits that the facts are exactly the other way round. The landlord, in collusion with the present writ petitioner, has filed the instant writ petition to deprive the private respondent no. 7 (Sushma Jaiswal) from her rights accrued pursuant to the valid papers and the order of this Court.

By placing reliance on the annexures to the writ petition, learned counsel submits that the present petitioner is a tenant in respect of 60 sq.ft. only on the ground floor, whereas the writ petitioner is a tenant also in respect of a first floor portion of the same building, on the ground floor of which the respondent no. 7 (Sushma Jaiswal) is a tenant. Respondent no. 7 has trade licences to run an eatery and restaurant of 600 sq. ft. and 150 sq. ft respectively, as evident from the copies thereof annexed to the previous writ petition and also to the present writ petition as part of the annexures of the previous writ petition.

Hence it is borne out by the materials-on-record that the writ petitioner is a tenant in respect of the first floor and has a trade licence to run a business only in respect of 60 sq. ft on the ground floor.

Learned counsel appearing for the CESC Limited submits that the connection has been given on the

ground floor and the possession of the present writ petition has not been disturbed in any manner in doing so.

Upon considering the materials on record and the photocopy of the certified copy of the injunction order, handed over by learned Counsel for the respondent no. 7, it transpires that vide Order no. 2 dated May 21, 2022 passed in Title Suit No. 1122 of 2022, the Judge, Twelfth Bench of the City Civil Court at Calcutta granted an ad interim injunction restraining the defendants therein, that is, the present writ petitioner and the landlords of the premises from causing any obstruction or hindrance in the peaceful enjoyment and possession of Schedule A shop room and Schedule B shop room in the suit by the present respondent no. 7/plaintiff and from peaceful running of business in the said rooms and also from dispossessing the plaintiff from the Schedule A shop room and Schedule B shop room save and except by due process of law. It is an admitted position that the said injunction, *ex parte* or otherwise, is still subsisting. The binding precedence of the said judgment is subsisting irrespective of the order being *ex parte*.

Since the defendants in the suit, that is, the present writ petitioner and the landlords of the premises are bound by the said order, unless vacated, modified or set aside by a competent court, it does not lie in the

mouth of the petitioner to submit that the present writ petitioner is in possession of the premises where the electricity connection has been taken. In fact, even if the present writ petitioner has a dispute as regards the location of the electricity meter, it is open to the present writ petitioner to approach the competent civil court, where the title suit is pending, seeking appropriate orders.

However, since the common case of the respondent no. 7 and the Distribution Licensee is that the electricity connection has been given on the ground floor, which is substantially under the tenancy of the respondent no. 7, the argument that the present writ petitioner was a necessary party to the previous writ petition does not hold water.

The present writ petitioner, as a tenant in respect of a different portion of the same building, was neither a necessary nor a proper party in the previous writ petition, where the CESC Limited was directed to give electricity connection to the present respondent no. 7 (the writ petitioner therein). Hence, there does not arise any question of any grave and apparent error having crept into the previous order due to non-impleadment of the present writ in the previous writ petition.

Thus, the principles laid down in the judgments cited by the writ petitioner are not applicable in the facts and circumstances of the present case.

Hence, there is no scope of interference in the present writ petition.

W.P.A. No. 20845 of 2022 is, accordingly, dismissed.

However, it is made clear that nothing in this order shall prejudice the rights and contentions of the parties to the present writ petition in the civil suit pending before the competent civil court, where it will be open to all parties to urge their respective cases without being adversely 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.)