

ORDER SHEET
WPO/3048/2022
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

ANUP BAGARIA
VS
CESC LIMITED AND ORS

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date : 29th November, 2022.

Appearance:

Mr. Chayan Gupta, Adv.

Mr. Rittick Chowdhury, Adv.

Mr. Radhey Shyam Tiwari, Adv.

. . .for the petitioner.

Dr. Madhusudan Saha Ray, Adv.

. . .for the respondent nos.1 to 4.

Mrs. Sweta Gandhi Murgai, Adv.

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

Dr. Madhusudan Saha Roy, Adv.

. . .for the CESC Ltd.

The Court: Learned counsel for the petitioner contends that despite the petitioner being admittedly an occupier of the premises-in-dispute, the electricity connection of the petitioner has been severed at the behest of the private respondent.

Learned counsel appearing for the respondent no.7 submits that the said respondent is the maintenance company and it has acted by internally severing the said connection to the petitioner on the instructions of the

landlords, that is, the respondent nos.5 and 6, to whom respondent no.7 is answerable legally.

Learned counsel appearing for the respondent nos.5 and 6 disputes the contention that the petitioner is in lawful occupation of the premises. It is submitted that although the petitioner had been a lessee in respect of the premises, which is apparently governed by the Transfer of Property Act, subsequently the petitioner has stopped making due payments as per the lease agreement, for which the lease has already been terminated by a quit notice issued by the private respondent nos.5 and 6. As such, the internal electricity supply of the petitioner was disconnected due to such non-payment.

It transpires from the record and the submissions of the parties that the petitioner seeks to place reliance on certain purported receipts to show that the petitioner has been discharging his liabilities under the lease agreement.

Such contention, however, has been disputed by the private respondent nos.5 and 6, who argue that mere payment in the name of the private respondents by a third party, including the petitioner, if at all, cannot confer any special right in favour of the petitioner.

Although learned counsel for the petitioner is justified in arguing that electricity is a part of the right to life of a person, as assured under Article 21 of the Constitution of India as well as secured by Section 43 of the Electricity Act, 2003, the scope of a Writ Court is limited to the extent that the Writ Court can only proceed on admitted or apparent facts.

In the present case, however, a civil dispute has been raised between the petitioner and the private respondents, which is amenable to the jurisdiction of and within falls within the domain of a competent Civil Court. Since evidence has to be considered, at least *prima facie*, for the purpose of deciding the issues raised herein, the Writ Court is not equipped sufficiently to go into such nitty-gritties. Moreover, Article 21 has emanated from the Constitution, as has the Electricity Act, 2003 which is the specific statute governing the field. Section 43 thereof leaves scope for deviation from the right of a person to have electricity connection, which right is not unfettered.

In any event, the electricity connection in the present case has not been severed by the CESC Ltd. or any authority coming within the scope of Article 12 of the Constitution of India. Since the internal disconnection falls within the authority of the private respondents, it cannot be directed that the CESC give a fresh connection to the petitioner. Moreover, the CESC has specifically taken the stand that it is not technically feasible to give another separate connection to the petitioner at the same premises, since there is an already existing live high tension connection at the premises.

In view of the above reasons, there is no scope for granting any relief to the petitioner within the limited scope of the present writ petition.

Accordingly, WPO 3048 of 2022 is disposed of with liberty to the petitioner to approach the competent Civil Court and/or any other competent authority in accordance with law for the purpose of getting restoration of electricity supply internally at the premises where the petitioner is residing and/or claiming ancillary reliefs vis-à-vis the private respondents.

It is made clear that this Court has not entered into the merits of the respective contentions *inter se* the petitioner and the private respondents and it will be open to any other competent forum or Court, if so moved by any of the parties, to decide such issues in accordance with law.

Affidavit of service filed in Court be kept with the record.

No order as to costs.

Urgent certified website copies of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(SABYASACHI BHATTACHARYYA, J.)

SP/