

In the High Court at Calcutta
Constitutional Writ Jurisdiction

Appellate Side

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.A. No.522 of 2023

Suraj Moulders Private Limited
Vs.
Government of West Bengal, through
the Secretary, Department of Power and others

For the petitioner	:	Mr. Pranit Bag, Mr. Rahul Poddar, Mr. Riddhiman Mukherjee, Ms. Oindrila Ghosal, Ms. Shrayasi Dhang
For the respondent no.6	:	Mr. Ratnesh Kumar Rai, Mr. Ankan Rai, Mr. Sayantaan Das
Hearing concluded on	:	24.04.2023
Judgment on	:	02.05.2023

Sabyasachi Bhattacharyya, J:-

1. The petitioner Suraj Moulders Private Limited is a lessee under respondent no.5 Machino Transport Private Limited in respect of the disputed property by virtue of an agreement of lease dated February 24, 2018. In the lease deed it was, *inter alia*, provided that electricity up to 50 KW shall be supplied/provided from the transformer installed at the premises in the name of respondent no.6 and the lessee/petitioner shall pay all electricity charges for energy consumed by the lessee and proportionate transformer loss as payable to

respondent no.6 according to the reading in an exclusive sub-meter at the disputed premises.

2. Subsequently, on September 29, 2022 a copy of a notice purportedly dated September 20, 2022 was sent on behalf of the respondent no.6 to the petitioner, addressed also to the other tenants at the property, where it was alleged that the tenants, including the petitioner, were enjoying supply of electricity from the connection of respondent no.6 and never tried to obtain separate electricity connection from CESC Limited from their respective consumptions. It was further mentioned that such supply was a good gesture of the respondent no.6 just to support the tenants to “grow in their respective businesses”. It was indicated that the respondent no.6 was planning to have future new projects at the premises which would otherwise increase the electricity consumption of the said respondent; consequently, there would be possibilities of explosion in the transformer and other hazardous activities because the transformer would not be able to bear the pressure of the heavy consumption of electricity both by respondent no.6 and the tenants. On such ground, the respondent no.6 expressed its inability, through its advocate’s letter, to supply electricity at the premises of the tenants from its own connection any further and advised the tenants, including the petitioner, to apply before the CESC Limited for separate connection at their respective premises for supply of electricity. Such exercise was directed to be completed within Ten (10) days within receipt of the notice. In default,

the respondent no.6 threatened disconnection of the supply of electricity at the premises of the said tenants.

3. The petitioner acted accordingly and, upon due payment, took a new connection on November 29, 2022. The respondent no.6, on the other hand, disconnected the supply of electricity to the petitioner's portion on November 22, 2022.
4. However, again on December 14, 2022 respondent no.6 gave a notice to the petitioner and the other tenants citing a "judicial order" and asked the tenants to stop drawing electricity from any other meter and/or parallel connection, particularly the one lying in the name of the present writ petitioner, so as to enable respondent no.6 to supply electricity in alleged compliance of the order dated December 2, 2022 passed in a civil revision between the respondent nos.5 and 6.
5. Learned counsel for the petitioner contends that, in pursuance of such notice, the CESC Limited issued a notice on January 3, 2023 to the petitioner, threatening to depute its personnel on January 9, 2023 at 10 am to 12 noon to de-energize the supply of the new meter in the name of the petitioner. Allegedly, the ground for such threatened action was the order passed in the Civil Revision bearing CO No.3585 of 2022 between the respondent nos.5 and 6. It was indicated that reenergizing the same would be subject to further orders of the High Court.
6. Challenging the said notice, the present petition has been preferred. Learned counsel for the petitioner argues that the respondent no.6 is debarred by Estoppel from resiling from its previous position, directing

the petitioner to take a new electricity connection in its own name and to disconnect the supply from respondent no. 6. It is contended that the petitioner as well as the respondent no.6 acted on the lease deed, whereby the respondent no.6 was duty-bound to provide electricity to the petitioner from its own meter. Again, when the notice dated September 29, 2022 was issued to the petitioner by the respondent no.6 itself, directing the petitioner to take its own connection, the same was also acted upon by the petitioner, who, upon payment of substantial amounts, took a new connection on November 29, 2022. Hence, the respondent no.6 cannot, at its own whims, again resile from such position and seek disconnection of the petitioner's independent electricity supply.

- 7.** Secondly, it is argued that the sole ground on which the respondent no. 6 and the CESC Limited sought disconnection was the order passed in CO No.3585 of 2022 on December 2, 2022. However, the petitioner was not a party to the said litigation and is not bound by the said order. Moreover, the direction of the revisional court was merely an observation that enjoyment of the electricity by the opposite parties therein may be permitted to be continued in the manner as before being supplied by the petitioner therein, that is, the present respondent no.6 till the end of January, 2023.
- 8.** There is nothing in such order, it is argued, which would compel the CESC Limited or the respondent no.6 to seek disconnection of the petitioner's independent electricity supply.

- 9.** The dispute as regards the property being joint between the respondent nos.5 and 6 is sub judice in a civil suit between the said parties and does not bind the petitioner in any manner whatsoever. Hence, it is argued that the CESC Limited has no cause of action to de-energize/disconnect the independent electricity supply of the petitioner.
- 10.** The respondent no.6 contested the writ petition primarily on the ground that since the petitioner has been admittedly enjoying electricity connection in both portions from the meter of the respondent no.6 throughout its tenancy, it cannot be disputed by the petitioner that the property is joint.
- 11.** It is further argued that the structure raised on the property, from which the new electricity connection has been given to the petitioner, is an unauthorized and illegal construction and, as such, the electricity supplied therefrom contravenes the law.
- 12.** It is further argued by the respondent no.6 that every co-owner has right and interest in the whole property. Without permission of the respondent no.6, a co-owner, the construction could not be raised for the purpose of giving electricity connection to the tenants by the respondent no.5.
- 13.** It is further argued that the petitioner was aware from the inception regarding the issue of over-drawal of electricity in the premises. However, the petitioner, who is also a tenant of the respondent no.6, ought to have sought permission before erecting or aiding unauthorized construction, which it deliberately did not do.

14. Hence, it is argued that the petitioner has not come to court with clean hands and is not entitled to any relief.
15. In such context, reliance is placed on the judgment of *Lourdu Mari David and others Vs. Louis Chinnaya Arogiaswamy and others*, reported at (1996) 5 SCC 589.
16. The respondent no.6 also cites a judgment reported at (2007) 6 SCC 120 [*Arunima Baruah Vs. Union of India and others*] to challenge the maintainability of the writ petitioner. In the said judgment, it was held that unless all material facts are disclosed, the writ petition would not be maintainable.
17. The respondent no.6 also places reliance on a Single Judge decision of the Kerala High Court reported at AIR 2022 Ker 157 [*J. Rajendran Pillai Vs. B. Bhasi and others*].
18. It is contended on the strength of such judgment that every co-owner has a right and interest in the whole property and attempts of one co-owner to erect any construction in the common property without obtaining the consent of all co-owners ought to be restrained, along with any accomplice of his.
19. A perusal of the documents annexed to the pleadings in the present case clearly bring out certain facts.
20. Although the lease deed dated February 24, 2018 was executed between the petitioner and the respondent no.5, it was clearly indicated therein that the lessee would be supplied with electricity up to 50 KW from the transformer of respondent no.6 and would pay proportionately for the transformer loss as well as for the energy

consumption. The said deed was admittedly acted upon by regularly supplying the petitioner with electricity from the transformer of the respondent no.6, without any dispute being raised in that regard by the respondent no.6.

- 21.** However, by the subsequent Notice dated September 29, 2022, which placed reliance on a purported previous notice dated September 20, 2022 the respondent no.6 specifically directed the tenants, including the petitioner, to take separate connection within ten days. The reason cited was clearly that the respondent no.6 was planning certain new future projects which would require a heavier load of electricity.
- 22.** The petitioner acted upon such direction of the respondent no.6 and took a new electricity connection on November 29, 2022, which was provided by the CESC Limited without any demur. The respondent no.6, moreover, also acted upon its own notice by disconnecting its supply to the petitioner from the transformer of the respondent no.6, even before the new connection was given to the petitioner.
- 23.** Hence, the respondent no.6 was bound by Estoppel from resiling from such position immediately thereafter and giving a notice to the petitioner on December 14, 2022, asking the petitioner to immediately stop drawing electricity from its own meter and insisting that the respondent no.6 only could supply it.
- 24.** Even apart from the bar of Estoppel, the sole ground which was cited for such directive was the order passed in CO No.3585 of 2022 on December 2, 2022. However, the petitioner was never a party to the

said proceeding or the suit from which the same arose. Hence, the petitioner was not bound by the said order by any stretch of imagination.

- 25.** Moreover, a perusal of the said order clearly indicates that, by virtue of the same, it was stipulated that enjoyment of electricity by the opposite parties in the revision, that is, the respondent no.5 and others, may be permitted to continue in the manner as before, being supplied electricity by the revisionist petitioner (present respondent no.6) till the end of January, 2023.
- 26.** The said direction on the respondent no. 6 could not in any manner justify the disconnection of the petitioner's supply.
- 27.** There is no other reason cited in the notice dated December 14, 2022 than the alleged violation of the order of the revisional court.
- 28.** Rather, the respondent no.6 had specifically directed the petitioner to take its own electricity supply at the premises under the threat of disconnection of the existing supply from the transformer of the respondent no.6, which was fully acted upon by the respondent no.6 itself by disconnecting such supply from its transformer to the petitioner. The petitioner also acted upon the same and invested huge amounts of money and resources to take the new electricity connection. The alleged illegality in the construction from which the new connection was given never featured in the communications, either by the respondent no.6 or by the CESC Limited, at any point of time.

- 29.** It is a new ground sought to be made out before this Court for the first time in the writ petition. It is well-settled that a new ground for the impugned action cannot be set up for the first time in the pleadings made in the affidavit-in-opposition to the writ petition, which has precisely been done in the present case by the respondent no.6.
- 30.** Insofar as the CESC Limited is concerned, being satisfied of compliance of all formalities by the petitioner, it had given electricity supply to the petitioner and there is no allegation on the part of the CESC Limited that any electricity law or regulation was contravened by the petitioner at any point of time, to instigate the CESC Limited to disconnect its supply.
- 31.** Inasmuch as the order of the revisional court is concerned, neither the CESC Limited nor the petitioner are parties thereto and the said order does not in any manner necessitate or justify the threat of disconnection issued by the CESC Limited to the petitioner, which is entirely unwarranted and *de hors* the law. In such circumstances, the impugned notice of the CESC Limited dated January 3, 2023 is palpably illegal and cannot survive judicial scrutiny.
- 32.** Accordingly, WPA No.522 of 2023 is allowed, thereby setting aside the impugned notice dated January 3, 2023 insofar as the petitioner is concerned. The respondent nos.2 and 3, being the CESC Limited and its District Engineer, are restrained by an order of injunction from giving any effect whatsoever to the said impugned notice which, hereby, stands quashed and set aside.
- 33.** There will be no order as to costs.

- 34.** Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)