

D/L. 42.
January 20, 2023.
MNS.

WPA No. 1415 of 2023

Rajeev Kumar Gupta and others
Vs.
The State of West Bengal and others

Md. Nauroz Rahber,
Mr. Amit Ranjan Pati,
Mr. Ashok Halder,
Ms. Maariyah Islam,
Ms. Salma Khatoon

... for the petitioners.

Mr. Alak Kumar Ghosh,
Mr. Gopal Chandra Das

...for the KMC.

Mr. Manoj Malhotra,
Ms. Kakali Naskar

...for the State.

Mr. Somnath Bose

...for the CESC Limited.

Mr. Amal Kumar Dutta,
Mr. Imtiaz Ahamed,
Mr. Sayan Chatterjee,
Mr. Jyotirmay Chakrabarti,
Mr. Kaustav Sen,
Ms. Ayesha Janam,
Mr. R. A. Molla

...for the respondent nos. 16 to 19.

At the outset, an objection as to the maintainability of the present writ petition under Article 226 of the Constitution of India is taken by respondent nos. 16 to 19.

It is submitted that the respondent nos. 16 to 19 do not come within the purview of 'State' as envisaged under Article 12 of the Constitution of India. However, in view of the serious allegations made against the said respondents, the said objection cannot be sustained.

It is well-settled that the writ Court has ample power under Article 226 of the Constitution of India even to redress the grievance of individuals or grievances raised against individual entities, in the event there is gross violation of fundamental rights, as guaranteed by the Constitution of India.

In the present case, in view of the nature of the allegations made, the rights conferred upon the writ petitioners within the contemplation of Articles 14 and 19 of the Constitution of India are squarely violated.

The petitioners are stall owners in the Simpark Mall situated at 19, Nellie Sengupta Sarani, Kolkata- 700 087.

It is argued that due to a dispute between the Simpark Mall Shop Owner's Welfare Association, being the respondent no. 16, and some of its office bearers, being the respondent nos. 17 to 19, the said respondents issued a notice dated December 21, 2022, a copy of which is annexed at page 77

(Annexure – P/5 of the writ petition), indicating that if any stall holder/owner “do any type of legal case against the Executive member of association and Simpark Mall Owner’s Welfare Association then their shop’s electricity would be disconnected till the dissolvent of the case or withdrawn by the said stall holder/owners.”

It is submitted that the electricity connection of the petitioner no. 4 was illegally disconnected by the said respondents. Moreover, the other petitioners, who are also shop owners at the same mall, are also under threat of disconnection for no fault of theirs.

Learned counsel further submits that in exceptional cases, where there is a question of violation of fundamental rights of an individual, whose interest ought to be safe-guarded by the Kolkata Municipal Corporation, under the aegis of which the entire mall is run, the court can interfere under Article 226 of the Constitution of India.

Learned counsel appearing for the respondent nos. 16 to 19 submits that there has been an ongoing dispute in view of the petitioner no. 4 having committed illegalities.

It is submitted that, contrary to the norm in the said mall and the decision of the Association,

the petitioner no. 4 has set up an illegal counter in the mall, thereby encroaching upon the common passage.

Learned counsel further submits, on instruction, that in view of petitioner no. 4 being adamant and having not removed the same, despite such decision being taken by the Association and communicated to him, the respondent nos. 16 to 19 were compelled to disconnect his electricity supply as a measure of sanction.

However, learned counsel submits that the respondents disown the purported notice dated December 21, 2022, annexed to the present writ petition, and submits that the Association is not responsible for the issuance of such purported notice in any manner whatsoever. Moreover, it is submitted that the respondent nos. 16 to 19 do not have any grievance as regards the petitioner nos. 1 to 3 and 5 to 10, that is, the other petitioners apart from petitioner no. 4.

Heard learned counsel for the parties.

It transpires that the Kolkata Municipal Corporation and/or the State or the CESC Limited have no direct role to play in the present dispute. The dispute is civil in nature, inasmuch as the respondent nos. 16 to 19, who are a registered

Association and the functionaries of the said Association respectively, allege that petitioner no. 4 has been doing acts contrary to the decision of the Association and contrary to law by encroaching upon a common passage to the detriment of the interest of all the shop owners.

Since the respondent nos. 16 to 19 disown the issuance of the purported notice dated December 21, 2022 (Annexure- P/5 at page 77 of the writ petition), there is no question of any action being taken by any party on the basis of such notice.

The said notice cannot stand the scrutiny of law, in any event, because such type of threat is palpably *de hors* the law and in violation of norms of natural justice and the fundamental rights enshrined in the Constitution of India.

Inasmuch as the disconnection of electricity supply by the respondent nos. 16 to 19 with regard to the connection of petitioner no. 4, one of the shop owners, is concerned, the same is, however, patently illegal since, as a measure of sanction for non-compliance with the Association's directive, the Association has no right in law whatsoever to disconnect the electricity supply of a member-shop owner, which is a basic necessity guaranteed under

Article 21 of the Constitution of India as well as Section 43 of the Electricity Act, 2003 (herein referred to as “the 2003 Act”).

Inasmuch as the allegations made by respondent nos. 16 to 19 against the petitioner no. 4 are concerned, there is no scope of interfering in such disputes within the premise of the present writ petition. However, needless to say, the respondents shall always have the liberty to take due action in accordance with law for removal of such encroachment. However, the respondent nos. 16 to 19 have no authority to take the law in their own hands, *de hors* all norms of natural justice and legal procedure.

In view of the above observations, WPA No. 1415 of 2023 is allowed, thereby quashing the purported notice dated December 21, 2022 annexed at page 77 of the writ petition and directing respondent nos. 16 to 19 to restore the electricity connection of petitioner no. 4 within three days from date.

Inasmuch as the civil dispute which has arisen between the respondent nos. 16 to 19 and the petitioner no. 4 is concerned, it will be open to the said respondents to approach the appropriate forum for ventilation of such grievance and seek

redressal of the disputes. If so approached, the said forum or authority shall decide all the issues independently and in accordance with law without being prejudiced in any manner by any of the observations made herein.

Since no affidavits were invited in the matter, it is deemed that the allegations and counter allegations made against each other by the parties during the course of submissions are not admitted by their adversaries.

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.)