

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 4757 of 2023

Shivaji Ghosh & Ors.
Vs.
The West Bengal State Electricity
Distribution Company Limited & Ors.

Mr. Nemani Srinivas,
Mr. A.K. Barman
...for the petitioners

Mr. Madhusudan Saha Ray
...for the WBSEDCL

Learned counsel appearing for the petitioners contends that the petitioners are individual flat owners in respect of the first three floors above the ground level in the premises-in-question and despite having applied for new electricity connection, the West Bengal State Electricity Distribution Company Limited (WBSEDCL) has not yet given such electricity connection to the petitioners.

Despite service, none appears for the private respondent no. 7/developer. It appears from the affidavit of service, which is kept on record, that service was refused by the private respondent no. 7. Such refusal of service tantamounts to good service in law.

Learned counsel appearing for the WBSEDCL submits, by placing reliance on a copy of an order passed by a coordinate Bench of this Court dated

August 25, 2021 in WPA No. 2627 of 2021, contends that a similar application for electricity connection to the same building made by the developer/respondent no. 7 was refused by the coordinate Bench on the ground that the building has ground plus four floors, which is beyond the sanction plan, which is upto G+3, and, hence, illegal. A copy thereof is handed over by learned counsel for the WBSEDCL, which is kept on record.

It is clear from the said order that the premise for refusal electricity connection to the developer of the entire building was that the building was apparently illegal insofar as the construction of the fourth floor above ground level was concerned. In such context, the learned Single Judge observed that since there is an additional floor, which is beyond the sanction, the question of granting electricity connection to the petitioner therein (the present respondent no. 7) does not arise. The said petitioner, it was further held, cannot be allowed to enjoy the usufructs of an illegality. The Distribution Company was directed to inform the relevant municipal authorities about the construction at the locale and the municipal authority was directed to initiate appropriate proceedings against the petitioner in the event it was found that there was any unauthorized construction.

It appears from the submission of learned counsel for the WBSEDCL that the Distribution Licensee duly intimated the said order to the municipal authorities within the stipulated time. However, the municipal authorities have not yet taken any step in that regard. Learned counsel for the WBSEDCL submits that since the load-factor would be different for a four storied and a three storied building, it would be difficult to give electricity connection at present considering the premises to be a G+3 storied building, without considering the fourth floor being illegal. Ultimately, in the event the fourth floor is declared to be authorised, it would then be difficult to supply electricity connection to such floor.

However, upon query of Court, it transpires that in the event there is a subsequent authorised and duly sanctioned construction of additional floors on a pre-existing building having a prior electricity connection, it would not be impossible to give electricity connection for the newly constructed sanctioned floors.

As such, the load factor or the difference thereof between G+3 and G+4 constructions cannot come in the way of separate individual electricity connection being given to the present petitioners, none of whom are residing on the allegedly unauthorized fourth floor. Since all the petitioners reside within the authorised and sanctioned portion of the building, the ground on

which the WBSEDCL is refusing electricity connection to the petitioners is invalid.

That apart, since the order of the coordinate Bench applied to the alleged illegality in respect of the fourth floor, the ground on which connection was refused to the developer of the entire building, was entirely different from the present case.

As such, the present petitioners cannot be debarred from getting their electricity supplies by an order passed in a different proceeding where they were not parties.

Moreover, in view of the building being lawful and as per sanctioned plan up to the G+3 level, up to which the petitioners are all residing, even without going into the question of the fourth floor being authorised or unauthorized, the petitioners are entitled to get electricity connection under Section 43 of the Electricity Act, 2003.

Accordingly, W.P.A. No. 4757 of 2023 is disposed of by directing the WBSEDCL to immediately raise a quotation indicating the necessary compliances to be fulfilled by the petitioners for getting individual electricity connections to their respective flats situated in the lawfully constructed portion of the building, that is, up to the G+3 level of the same, as expeditiously as possible, preferably within a fortnight from date.

Upon the petitioners complying with all formalities in that regard, the WBSEDCL shall give new electricity connections to the petitioners by notionally construing the building to be a G+3 construction for such limited purpose, within three weeks from the date of compliance of all formalities by the petitioners.

However, it is made clear that the question of the fourth floor of the building being authorised or unauthorized is not being gone into by this Court within the limited conspectus of the present writ petition and all parties are at liberty to agitate their grievances in that regard before the appropriate forum. Nothing of this order shall legalize the fourth floor of the construction, if it is not otherwise lawful/legalized in accordance with law.

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.)