

AD-11
Ct No.09
29.03.2023
TN

WPA No. 7191 of 2023

Tito Tarafdar
Vs.
CESC Limited and others

Mr. Bidyut Kr. Halder,
Mr. Indranil Halder,
Ms. Neha Singh

.... for the petitioner

Ms. Sreemoyee Mitra

.... for the CESC Limited

Mr. Md. Adil Badr,
Mr. Sobhan Gani,
Mr. Md. Aqib Badr,
Mr. Shakti Shivam,
Ms. Nafisa Anwar

....for the respondent no.4

Learned counsel for the petitioner submits that the petitioner is seeking a new electricity connection which is not being given by the CESC Limited primarily due to the objection of private respondent no.4.

Learned counsel for the CESC Limited contends that the CESC Limited could not hold any inspection to ascertain the feasibility of giving such connection and/or whether there would be any apprehended splitting of load if such connection is given.

Learned counsel appearing for the private respondent submits that the private respondent as

well as the petitioner are separate tenants in respect of the property. It is further submitted that despite the private respondent having obtained an order of *status quo* from a civil court in connection with a suit filed by the private respondent, the petitioner violated the same and encroached upon the property of the private respondent. As a result, the private respondent has already initiated proceedings under Order XXXIX Rule 2A of the Code of Civil Procedure before the competent court. It is apprehended by the private respondent that the petitioner is seeking such new electricity connection merely to claim a further right in the property and giving such permission shall amount to giving a premium to violators of orders of court.

Such contentions of the private respondent are disputed by the petitioner and the petitioner seeks to rely on a copy of a trade licence, the veracity of which is also disputed by the private respondent.

Upon hearing learned counsel for the parties, it transpires that evidently, there is a pending dispute between the petitioner and the private respondent, which is also *sub judice* before a competent civil court. In the teeth of the allegations of the private respondent that the petitioner has violated an order of court, which has not yet been decided by the said

court, the rights and contentions of the parties in the said proceedings before the civil court cannot be prejudiced in any manner.

However, under Section 43 of the Electricity Act, 2003, read in conjunction with Article 21 of the Constitution of India, the petitioner has a right to get an independent electricity connection at the premises on the strength of his occupation of the same, irrespective of the legality or otherwise of such occupation.

Hence, WPA No. 7191 of 2023 is disposed of by directing the CESC Limited to hold an inspection upon service of prior notice to the petitioner as well as the private respondent for the purpose of ascertaining the feasibility of giving a new electricity connection to the petitioner.

It is, however, made clear that in the event it is found to be otherwise feasible, no objection shall be raised by the CESC Limited regarding apprehended splitting of load in view of the petitioner and the private respondent being separate tenants and having acrimony between them.

Upon such inspection being held, preferably within a fortnight from date, the CESC Limited shall raise a quotation, if the connection is found feasible, upon which the petitioner shall deposit the necessary

costs and comply with all requisite formalities. Within a fortnight from compliance of such formalities, the CESC Limited shall give an electricity connection to the petitioner.

However, it is made clear that the electricity connection, if given to the petitioner, shall not in any manner create any special right or equity in favour of the petitioner and/or legalize illegality, if any, of such possession of the petitioner with regard to the property-in-dispute. Such connection, if given, will be without prejudice to the rights and contentions of the parties before any court of law. In the event the respondent no.4 and/or his men and agents provide any obstruction to the CESC personnel in giving such connection or holding such inspection, the CESC personnel will be at liberty to approach respondent no.3, the Officer-in-Charge, Bowbazaar Police Station for adequate police assistance. Such assistance will be given by the respondent no.3 at the cost of the petitioner by acting on a server copy of this order at the instances both of the inspection and giving such connection to the petitioner.

In the event there is any padlock is affixed by the private respondent and/or his men and agents to prevent the CESC personnel from doing so, it will be open to the police personnel to remove such padlock

or other hindrance for the limited purpose of giving access to the CESC personnel to give the electricity connection and hold the inspection for such purpose at the premises.

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.)