

D/L. 7.
April 19, 2023.
MNS.

WPA No. 7992 of 2023

Sumita Das
Vs.
CESC Limited and others

Mr. Dwaipayan Banerjee,
Mr. Abir Das

... for the petitioner.

Mr. Saurav Chaudhuri

...for the CESC Limited.

Mr. Dipankar Aditya,
Mrs. Tina Biswas

...for the private respondents.

Learned counsel for the petitioner contends that the petitioner is an occupant of the premises and is a tenant in respect of the same.

Initially the electricity supply of the petitioner was disconnected due to non-payment of electricity charges. However, upon clearing all the dues, the CESC Limited had attempted to restore the electricity connection of the petitioner. Yet, due to active resistance by the private respondents and their men and agents, the CESC Limited personnel failed to do so, for which the present writ petition has been filed.

Learned counsel for the CESC Limited contends that the petitioner has actually deposited all the outstanding dues and upon such deposit, the CESC Limited went on several occasions to give the connection, but could not do so in view of the resistance put up by the private respondents and/or their men and agents.

Learned counsel appearing for the private respondents submits that all the private respondents are octogenarian persons. It is contended that the petitioner was in service at the residence of the private respondents, and had taken leave and licence regarding one room.

However, subsequently, in a bid to grab larger portions of the property, the petitioner has encroached upon the same. It is submitted that the petitioner has also filed a civil suit before the competent court. Upon an injunction being sought by the petitioner before the civil court, the same was refused and the temporary injunction application was dismissed.

Hence, the petitioner's *prima facie* possession in respect of the disputed property has not yet been established.

It is further contended by the private respondents that the petitioner had not applied for

a new connection, but had sought a transfer initially in respect of the meter standing in the name of the erstwhile consumer, who is now deceased. It is alleged by the private respondents that the transfer was obtained by producing consent of the deceased person. Moreover, the petitioner had no *locus standi* to seek such transfer.

The private respondents have, accordingly, raised objection with regard to such transfer, which has not been decided by the CESC Limited.

Of course, learned counsel for the petitioner denies the allegations made by the private respondents and submits, on instruction, that the petitioner is a tenant in respect of the property and a suit in that regard is now pending before the competent civil court.

A perusal of the copy of the order dated September 20, 2022 passed by the Civil Judge(Junior Division), 3rd Additional Court at Alipore, District – South 24-Parganas in Title Suit No. 549 of 2022, which is handed over in Court by learned counsel for the private respondents, clearly indicates that the trial court refused to grant injunction and dismissed the petitioner's

application for injunction upon a finding that no *prima facie* case was found in favour of the plaintiff/petitioner.

It is well-settled that such findings are tentative, being rendered for the purpose of deciding the injunction application and cannot be conclusive as against the parties. However, as on date, there is a finding staring on the face of the petitioner, which indicates that the petitioner failed to prove her *prima facie* case before the civil court.

Although learned counsel for the petitioner has sought to rely upon the police report filed in connection with a connected proceeding under Section 144 of the Code of Criminal Procedure, the said document cannot be relied on as a conclusive proof of possession or title of the petitioner.

Be that as it may, what is evident from the submissions of the parties is that there is a pending dispute as regards the portion of the property where the electricity connection is sought by the petitioner. A suit is also pending before the Civil Court where the petitioner has failed to establish *prima facie* her possession with regard to the said property. In the teeth of

allegations of encroachment made by the private respondents, it would not be proper to hold at this premature stage that the petitioner is in 'settled possession' of the property, which would entitle the petitioner to get electricity connection in her own name or restoration of the same, under the provisions of Section 43 of the Electricity Act, 2003 (in short '2003 Act'); more so, since the petitioner's *locus standi* to have the transfer of the electricity connection in her name, without allegedly having any nexus with the erstwhile consumer, is still pending before the CESC Limited.

Hence, in view of the above observations, WPA No. 7992 of 2023 is disposed of by directing the CESC Limited to decide on the objection raised by the petitioner to the *locus standi* of the petitioner to seek transfer of the electricity meter previously standing in the name of a deceased person. Such decision shall be taken by the CESC Limited in accordance with law and upon giving opportunity of hearing to the parties and/or their representatives.

Such decision shall be taken as expeditiously as possible, preferably within four weeks from date.

In the event the CESC Limited is ultimately of the opinion that the transfer in respect of the petitioner was otherwise valid in law, the electricity connection of the petitioner shall be restored by the CESC Limited, however, without prejudice to the rights and contentions of the parties in the pending civil suit and/or before any other competent forum.

In the event, however, the CESC Limited is of the opinion that the initial transfer was bad, the CESC Limited shall not restore the electricity supply of the petitioner and shall refund the deposits, if made by the petitioner, for the purpose of such reconnection.

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.)