

D/L. 24.
March 24, 2023.
MNS.

WPA No. 7919 of 2022

Sanjit Biswas
Vs.
State of West Bengal and others

Mr. Giasul Islam
...for the petitioner.

Mr. Manas Kundu,
Md. Mansoor Alam

...for the State.

Mr. Suman Ghosh
...for the CESC Limited.

Mr. Dwijadas Chakraborty
...for the Kolkata Municipal Corporation.

Mr. Bratin Kumar Dey,
Ms. Mahasweta Pramanik

...for the respondent nos. 9 & 10.

The contention of the petitioner is that, despite there being a co-ordinate Bench judgment specifically observing that the building-in-question is an illegal construction, electricity connection has not been disconnected with regard to the said building.

Learned counsel for the petitioner places reliance on a judgment of the Supreme Court in *State of U.P Vs. Raj Narain and others*, reported at *AIR 1975 SC 865*, for the proposition that the public and the citizens have a right in taking

public interest to inspect the documents of State or State functionaries. It is submitted that the privilege of secrecy cannot be claimed as a matter of course.

In the said judgment, it was observed by the Supreme Court, *inter alia*, that in a community under a system of representative government, there can be only few facts which require to be kept secret with that solidity which defies even the inquiry of courts of justice.

Learned counsel further places reliance on the order of a criminal court, annexed to the affidavit-in-reply of the petitioner, and submits that a criminal court in another proceeding has clearly come to the finding that the entire building-in-question was constructed without any valid sanction plan and hence is illegal and decided the criminal case on such premise.

Learned counsel for the CESC Limited submits that an inspection report of the CESC Limited indicated that there is no service connection presently existing at the premises-in-question. However, the existing common service connection at 10/1 Gopal Doctor Road, Kolkata-700 023, situated adjacent to the said building, with fourteen connected meters, is catering

supply to both the aforementioned premises along with others.

Learned counsel for the CESC Limited further submits that the inhabitants residing at present on the ground floor of the disputed premises, who are enjoying electricity from an adjacent premises, come within the purview of “consumer” as defined under Section 2(15) of the Electricity Act, 2003 (2003 Act) and, as such, there is no legal bar in such enjoyment.

A report filed by the Kolkata Municipal Corporation (KMC) today also discloses that steps were duly taken in terms of the previous order of court and by an order dated January 16, 2020 under Section 400(8) of the KMC Act, a demolition programme was scheduled on March 24, 2022 at the captioned premises. As per schedule, it has further been indicated that all roof slabs of the illegal top floor were demolished.

It is further recorded that at about 3.45 pm the work was completed and all Engineers of KMC returned to the Watgunge Police Station safely.

Learned counsel for the petitioner disputes the veracity of the said reports filed by the KMC as well as the CESC Limited. It is submitted that

the KMC ought to come out with clean hands by disclosing the exact nature of illegality and how far the building has been demolished.

It is seen from the materials on record, in particular, the annexures to the writ petition as well as the affidavit-in-opposition, that although in a subsequent proceeding a Court of the Magistrate has come to the finding that the building-in-question has been constructed without any valid sanction plan and was thus illegal, the same does not tantamount to or stand on a similar footing as a proceeding initiated by the KMC, which is the statutory authority to deal with demolition processes.

In fact, it transpires from the report of the KMC that the demolition work has already been carried out vide order of the Mayor dated January 16, 2020 on March 24, 2022 at the captioned premises.

Even the report of the CESC Limited indicates that there is no service connection at present at the building/premises-in-question. In view of there being no such connection at present, which fact has not been rebutted by cogent evidence, it cannot be said that the cause of action of the petitioner is still alive.

That apart, this Court, sitting in writ jurisdiction in an electricity matter, on a complaint of the petitioner that illegal connection has been given to a portion of the unauthorised construction, cannot enter into the question of merits as to whether the KMC duly complied with the order passed by the co-ordinate Bench and demolished the entire premises.

Inasmuch as the cited judgement of the petitioner is concerned, the same was rendered in a different context. In the said case, a privilege was claimed on the ground of official secrecy, where it was observed that to justify such a privilege, secrecy must be indispensable to induce freedom of official communication or efficiency in the transaction of official business and it must be further a secrecy which has remained or would have remained inviolable but for the compulsory disclosure. However, the said judgement or the ratio laid down therein has no conceivable bearing on the present case since we are not dealing with an application filed by the petitioner for information under the Right to Information Act.

The limited scope of the present writ petition is whether the alleged electricity

connection still prevails at the premises and, if so, whether it can be retained even after the building has been declared to be an illegally constructed building.

Such dispute is resolved in view of the above observations to the effect that the KMC takes a specific stand that the illegal portion has already been demolished. Even without going into the merits of the veracity of such contention, the report of the CESC Limited discloses that there is at present no service connection at the premises-in-question.

Hence, there is no question of granting any further order directing the CESC Limited to disconnect any electricity connection at such premises.

However, needless to say, in the event the petitioner has any civil dispute against the private respondents and/or has any further grievance regarding any illegality or unauthorised construction existing at the premises-in-question, it will always be open to the petitioner to approach the appropriate authority by raising such issue before such authority.

If so approached, the competent authority shall decide such issue independently and irrespective of any observation made herein.

However, the present writ petition is devoid of any cause of action.

Accordingly, WPA No. 7919 of 2022 is dismissed on contest without any 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.)