

D/L. 10.
August 30, 2023.
MNS.

WPA No. 8989 of 2023

Moon House Tenants Welfare Association
Vs.
CESC Limited and others

Mr. Sourjya Ganguly,
Mr. Arindam Kundu

... for the petitioner.

Dr. Madhusudan Saha Roy

...for the CESC Limited.

Mr. Jayanta Samanta,
Mrs. Rupsha Chakraborty

...for the State.

Mr. Ajoy Krishna Chatterjee,
Mrs. Indrani Chakraborty

...for the respondent no. 3.

1. The police report filed in court today be kept on record.
2. Mr. Ganguly, learned counsel, in his usual flair, argues that the petitioner-Association represents certain tenants, who are in occupation of the property-in-dispute. A fire broke out in the property on October 16, 2020. The electricity supply to the property was, thus, disconnected on the same date.

3. Thereafter, when the inmates of the property sought for restoration of electricity supply, the CESC Limited cited a communication by the respondent authorities that the Custodian of Enemy Property for India claiming that the Custodian has taken possession of the property.
4. It is argued that although subsequently the Custodian of Enemy Property for India also obtained eviction order against several tenants of the property, under Sections 4 and 5 of the Public premises (Eviction of Unauthorised Occupants) Act, 1971 (1971 Act), a challenge has been preferred against the same under Section 9 of the 1971 Act.
5. In any event, it is argued that the members of the petitioner-association are in settled possession of the property. In such regard, learned counsel cites a Full Bench judgement of this Court reported at *AIR 2011 Cal 64 (Abhimanyu Mazumdar Vs. Superintending Engineer)*. In the said judgement, it is contended, it was observed categorically that even if the trespasser is in occupation of a property, the said occupation shall be deemed to be a settled possession, which will operate

against the rightful owner to the extent that it would entitle him to protect his possession even against the true owner, apart from in due course of law.

6. Learned counsel places particular reliance on the proposition laid down therein that even a trespasser in actual physical possession of the property over a sufficiently long period is entitled to the protection of law. However, the trespasser must be in actual physical possession of the property to the knowledge of the owner and the process of dispossession of the true owner must be complete and final. In the present case, it is argued that the members of the petitioner-association are on a better footing than a trespasser, since they have been tenants with regard to the property.
7. Learned counsel also places reliance on a judgement of this Court dated July 5, 2022 passed in *WPO 1214 of 2022 (Shamim Ahmed Alias Rafique Ahmed Vs. The Custodian of Enemy Property of India and others)*, which was rendered in connection with a writ petition filed by a purported owner of one of the flats in the self-same property. In the said matter, the Custodian of Enemy

Property for India took a plea that a notice was served duly by the said authority with regard to the property. The authority places reliance on the provision of the Enemy Property Act, 1968 (Act of 1968) and the Rules framed in connection therewith of the year 2015.

8. It is argued that this Court had observed that the possession of the petitioner therein was *ex facie* evident. The respondents, it is held, had acted *de hors* their statutory jurisdiction and contravened the law, as laid down in the Act of 1968 and the 2015 Rules, in seeking to oust the petitioner from physical possession in respect of the fifth floor flat of the disputed building without resorting to due process of law. Accordingly, the writ petition was disposed of by setting aside the purported notice dated February 1, 2022, which was affixed at the entrance of the said flat as fictitious and unlawful, being disowned by the Custodian, and observing with regard to the notice under Section 8 of the Act of 1968 dated November 27, 2021 that the petitioner therein would be at liberty to challenge the

same by a representation as contemplated under Section 18 of the Act of 1968.

9. It is submitted that, as such, the CESC Limited ought to restore the electricity supply to the members of the petitioner-association.

10. Learned counsel for the CESC Limited contends that the CESC Limited was all along willing to restore the supply of electricity subject to the consumers complying with the relevant formalities, including furnishing a no objection certificate from the Fire Department as well as effecting the repairs necessary in respect of the internal wiring of the property, which was to ensure the safety of the property and its inhabitants.

11. It is further argued that since the Custodian of Enemy Property for India had represented to the CESC Limited regarding its rights in the property, the same also acted as a deterrent to the restoration of the electricity supply.

12. Learned senior counsel appearing for the Custodian of the Enemy Property for India-respondent no. 3 contends that the inmates of the property, who are allegedly the members of the tenants association, which is the petitioner before this Court, have already

suffered an order of eviction under the 1971 Act. Thus, as of date, the said inmates are unlawful occupants with regard to the property, under the threat of eviction. As such, the said inmates cannot assert a right through their association, it is argued, to sanctify their possession of the property by way of restoration of electricity supply.

13. Upon hearing learned counsel for the parties, it is evident from the Full Bench judgment cited by the petitioner that the law is well-settled that a person in settled possession of a property is entitled to assert his rights under Section 43 of the Electricity Act, 2003 (2003 Act) read in conjunction with Article 21 of the Constitution of India.

14. In the present case, the fact that most of the members of the petitioner-association are in actual physical possession of the property cannot be doubted, since the Custodian of the Enemy Property for India itself initiated a proceeding under the 1971 Act, thereby admitting the physical possession of the said persons. Although the Custodian of Enemy Property for India has argued that such possession cannot be termed to be lawful as

on date, it is well settled that the lawfulness of the possession of a person is not a determinant to qualify his right to get electricity connection under Section 43 of the 2003 Act. Such proposition has been clearly laid down in the Full Bench judgement cited by the petitioner as well.

15. Hence, irrespective of the lawfulness or lack of it of the possession of the persons in occupation of the property, they are entitled to restoration of their electricity connection, if they were valid consumers of the CESC Limited in the first place.

16. Hence, WPA No. 8989 of 2023 is disposed of by directing the CESC Limited to restore the electricity supply of the valid consumers in respect of the disputed property, whose electricity supplies were disconnected by the CESC Limited due to the fire, which broke out on October 16, 2020, subject to the said consumers complying with all due formalities, including production of no objection certificate from the Fire Department and other relevant authorities to the CESC Limited. Such restoration of electricity supply shall be effected by the CESC Limited within a

fortnight from the date of the compliance of all due formalities by the valid consumers at the said premises, irrespective of the fact that they are members of the petitioner-association or not.

17. It is made clear that such connections, as and when restored, shall not operate in any manner to confer any special equity or right in favour of the said consumers, which they do not otherwise have in law and equity.

18. Moreover, such restoration of electricity supply shall be subject to the outcome of the procedure taken by the respondent authorities in respect of the eviction orders passed against the said consumers as well as the outcome of the appeal filed by the said consumers.

19. It is also clarified that the writ petition was entertained at the behest of the tenant-association in representative capacity and this order shall operate in respect of all the persons who are in occupation of the said property.

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.)