

D/L. 10.
July 24, 2023.
MNS.

WPA No. 16206 of 2023
with
WPA No. 11239 of 2023
with
CPAN 762 of 2023
+
CAN 1 of 2023
+
CAN 2 of 2023

Nandalal Chowdhury
Vs.
Jayanta Das and others

Mr. Soujanya Bandyopadhyay

... for the petitioner.

Mr. Debjit Mukherjee,
Ms. Susmita Chatterjee

...for the WBSEDCL.

Mr. Rajarshi Basu,
Mr. K. M. Hossain

...for the State in
WPA 16206 of 2023.

Mr. Avirup Mondal,
Mr. Amartya Pal

...for the State in
WPA 11239 of 2023.

Mr. Shuvro Prakash Lahiri,
Mr. Kunal Ganguly,
Mr. Tirupati Mukherjee

...for the private respondents.

Re: CAN 2 of 2023(modification)

Learned counsel for the applicants in CAN 2 of 2023, who were the private respondents in the original writ petition, submits that certain erroneous recordings of fact find place in the order dated May 17, 2023 passed in WPA No. 11239 of 2023.

It is submitted that apparently there was a miscommunication, when it was recorded in the third paragraph of internal page 2 of the said order, that in view of the private respondents seeking to construct a permanent structure on their property, on the formal prayer of the private respondents, the electricity connection was shifted to the rear portion of the petitioner's property, the same place from where the petitioner's brother is also enjoying an electricity connection.

It is submitted that, contrary to the observations made therein, the electricity connection was shifted to a bamboo structure not to the rear portion of the petitioner's property but to a portion which belongs to the private respondents/present applicants.

That apart, the petitioner's brother, contrary to the recording in the said order, is not enjoying electricity connection from the same

pole, but has his independent electricity pole for enjoying such connection.

It is submitted that in the internal page 3 of the same of the same order, it was also recorded that the petitioner does not intend to shift back the electricity connection to its original position, but merely seeks that the temporary bamboo structure from which the connection, after being shifted, has been given, be made permanent to avoid electrical and fire hazards. It is submitted that the said property, over which such permanent connection was sought by the petitioner, belongs not to the petitioner, but to the private respondents.

It is submitted that an inspection be held, either under the aegis of the WBSedCL or by an independent Special Officer, to ascertain the veracity of the averments made in the modification application.

Upon hearing learned counsel for the parties, there appears nothing to contradict the recordings made in the order dated May 17, 2023, passed in the writ petition, in the first place.

The entire observations in the said order, in several places, indicate that the electricity connection was shifted to the rear portion of the

petitioner's property, in view of the private respondents seeking to construct a permanent structure on their property, on the formal prayer of the private respondent themselves.

In so far as the right, title and interest over the said rear portion of the property is concerned, no order passed by the writ court in an electricity proceeding can confer any right on any particular person, which he does not otherwise have, and/or taking away any such right, if the person concerned has such right in law.

Hence, shifting to the rear portion of the petitioner's property as recorded in the said order merely referred to the location of the said connection after being shifted at the behest of the private respondents.

However, in so far as the said shifting being done on the formal prayer of the private respondents, nothing has been produced before this court to show any change of circumstances after the said averments were made in court by the private respondents.

Moreover, in so far as the recording that the petitioner's brother is also enjoying an electricity connection at the same place, the same does not necessarily indicate that the

petitioner's brother is using the same electricity pole-in-question for taking such electricity connection. What was indicated clearly in the order is that the location was the same, as evident from the expression "same place", which does not refer necessarily to the same electricity pole.

Hence, there is no scope of revisiting the order dated May 17, 2023 on such score.

Accordingly, CAN 2 of 2023 is dismissed, without any order as to costs, in the light of the above observations.

The contempt application is next taken up in view of the modification sought in CAN 1 of 2023, regarding grant of police help being somewhat dependent on the outcome of the contempt application.

Since certain allegations on facts have been made against the alleged contemnors, the alleged contemnors ought to be permitted to use an affidavit to the contempt application.

However, prior to such directions being passed, CAN 1 of 2023 is required to be taken up, in order to ascertain whether there is still any

disobedience, if any at the first place, on the part of the alleged contemnors.

CAN 1 of 2023 is, thus, taken up for hearing.

The petitioner is justified in arguing that in view of obstruction created by the private respondent, the petitioner and the WBSEDCL are entitled to police help while implementing the order of this court passed in the writ petition.

Accordingly, CAN 1 of 2023 is allowed, thereby granting liberty to the WBSEDCL personnel to approach the Officer-in-Charge of the Dugrajpur Police Station for grant of adequate police assistance in the event any obstruction is raised from any quarter, including from the private respondents and their men and agents, to prevent from the order dated May 17, 2023 passed in WPA 11239 of 2023 being implemented.

If so approached, the Officer-in-Charge of the Dugrajpur Police Station, and all concerned, shall act on a server copy of this order, without insisting upon prior production of a certified copy and grant such assistance to the WBSEDCL personnel at the cost of the petitioner.

A report with regard to such compliance shall be filed by the police authorities on the next returnable date.

The matter shall next be taken up for hearing on August 3, 2023 when it will be listed fairly at the top of the list.

The order of this court dated May 17, 2023 in WPA 11239 of 2023 shall be implemented, with police assistance, within August 1, 2023.

The report filed in court today be kept on record.

In Re: WPA 16206 of 2023

In view of the above orders passed in the previous matters, learned counsel for the petitioner submits, on instruction, that the petitioner does not want to proceed any further in WPA 16206 of 2023.

Accordingly, WPA 16206 of 2023 is disposed of without any order as to costs.

It is made clear that the present dismissal shall not prejudice the rights and contentions of any of the parties in the pending proceedings in connection with WPA 11239 of 2023.

(Sabyasachi Bhattacharyya, J.)