

16th May,
2023
(AK)
10

W.P.A 11377 of 2023

Dilip Sonkar

Vs.

The CESC Limited and others

Mr. Narendra Prasad Gupta

Ms. Alvina Bakhteyar

...for the petitioner.

Mr. Debanjan Mukherjee

...for the CESC Limited.

Ms. Tuli Sinha

...for the respondent nos. 3 & 4.

Mr. Prabir Maji

...for the respondent no.5.

The grievance of the petitioner, who claims to be a tenant in respect of the disputed property, is that despite a previous order passed by a coordinate Bench in WP 32160 (W) of 2014 dated March 10, 2015, directing the CESC Limited to give electricity connection to the petitioner at the premises, till date such connection could not be given due to resistance by the private respondent.

The private respondent, it is alleged, has affixed a padlock to the entrance of the existing meter board position, for which the CESC Limited could not give such connection.

Learned counsel appearing for the private respondent submits that the present writ petition is not maintainable, since the issue has already been decided in the order dated March 10, 2015 in WP 32160(W) of 2014.

Consequentially, the statement made by the writ petitioner in paragraph no.13 of the writ petition to the effect that, on the self-same cause of action no other application has been preferred or is pending, is an erroneous statement.

It is further argued that in connection with the self-same property and for the same relief, the writ petitioner has filed a suit which is now pending before the competent civil court.

Hence, the preset writ petition is not maintainable for the same relief.

Heard learned counsel for the parties including the CESC Limited.

It is clear, even upon accepting the submissions of the private respondent regarding the pendency of a suit and the existence of a previous order, that neither of the same debars the petitioner from getting an electricity connection at the premises.

In the order dated March 10, 2015, the learned Single Judge specifically directed that steps be taken by the respondent no.2 therein to effect supply to the petitioner's premise within six weeks from the date of compliance of all formalities by the petitioner.

The objection sought to be raised by the private respondent by letter dated June 16, 2014 cannot be sustained for the present as it is only in view of Title Suit no.673 of 2014 that the objection had been filed, it was found.

The learned Single Judge proceeded to observe that Section 43 mandates supply on request to an owner and occupier.

The petitioner is an occupier, even if illegal. As such, direction was given to the CESC Limited to give such connection to the petitioner.

It was further recorded that in case of obstruction caused by the private respondent therein (also the private respondent in the present writ petition), the respondent no.2 or his men will be entitled to seek police assistance, cost whereof be borne by the petitioner.

It transpires from the documents and the report filed by the State today, which is kept on record, that such exercise was completed by the petitioner by complying with all formalities.

Even the CESC Limited went to give such connection but could not do so, as per its own communication to the writ petitioner, due to the existence of a padlock at the entrance of the said premises, restricting the access of the CESC personnel to the existing meter board position.

Mere pendency of Title Suit No. 673 of 2014 for similar reliefs cannot be an impediment to the present writ petition being filed, since the relief sought in the present writ petition is virtually in consonance with the order passed on March 10, 2015 in the previous writ petition, where a specific direction for supply of electricity to the petitioner was issued.

Such order having attained finality, as correctly indicated by the private respondent as well, cannot now be reopened by the private respondent on the argument that the pending suit is a bar to the filing on the present writ petition.

Insofar as the veracity of the statement made in paragraph no.13 of the writ petition is concerned, such objection of the private respondent is also not tenable in law, since the cause of action for the instant writ petition is subsequent to the passing of the previous order dated March 10, 2015.

Only when the said order was sought to be implemented, the CESC Limited intimated the petitioner that the same could not be done due to a padlock being installed at the premises.

Hence, the private respondent is not justified in arguing that the statement that there was no other pending or prior application on the self-same cause of action is incorrect.

In fact, the present writ petition is virtually in the nature of implementation of the order dated March 10, 2015 passed in WP No. 32160(W) of 2014.

The private respondent, taking advantage of the fact that there was no specific direction on the police authorities in the said order to remove any padlock, if affixed, is obstructing the CESC Limited from giving effect to the said order.

As regards the other objection taken by the private respondent, that the order dated March 10, 2015 was not passed specifically directing the CESC Limited to give electricity connection to the petitioner from the existing meter board position at the premises, such objection is also frivolous, particularly at this belated juncture.

The private respondent, who was a party to the previous writ petition and was present through counsel when the order dated March 10, 2015 was passed, is debarred by the principle of constructive *res judicata* for not having raised the same question at the said relevant juncture.

Technically, the stand of the CESC Limited, as a licensee, is that two service connections at the same premises are not possible to be given.

As such, the obvious import of the order dated March 10, 2015 is to be construed to be that the CESC Limited shall give the connection to the petitioner from the already existing meter board position at the premises.

Moreover, the private respondent was a party thereto and did not take any objection in that regard at that relevant juncture.

Hence, WPA 11377 of 2023 is allowed on contest, thereby directing the CESC Limited to implement the order dated March 10, 2015 within a week from date.

If any padlock is put up or other obstruction is raised by the private respondent and/or his men and agents to the CESC personnel giving such connection

from the excising meter board position at the premises, it will be open to the police authorities to provide adequate police protection as well as to break open such padlock or remove any other hindrance, if affixed by the private respondent to prevent the CESC personnel from giving such connection to the petitioner from the existing meter board position at the premises.

The parties shall act on the server copy of this order, without insisting upon prior production of a certified copy of the same.

There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)