

D/L. 13 and 16.

May 18, 2023.

MNS.

WPA No. 12043 of 2023

Dilip Kanti Roy and others

Vs.

Calcutta Electric Supply corporation

Limited and others

With

WPA No. 10294 of 2023

+

CAN 1 of 2023

Sunanda Basu

Vs.

CESC Limited and others

Mr. Joydeep Acharya,

Ms. Saheli Mukherjee

... for the petitioner in WPA 10294 of 2023

&

private respondent in WPA 12043 of 2023

Mr. Suman Ghosh

...for the CESC Limited.

Mr. Partha Pratim Roy,

Ms. Sudeshna Basu Thakur

...for the petitioners in WPA 12043 of 2023

&

private respondents in WPA 10294 of 2023

Mr. Milan Kumar Maity

...for the State.

Re: CAN 1 of 2023 (recalling application)

filed in connection with WPA 10294 of 2023.

CAN 1 of 2023 is taken up for hearing.

The same has been filed for recalling of an order

dated May 3, 2023 passed in WPA 10294 of 2023. It has been averred in paragraph 24 of the application for recall that the applicant no. 1 is eighty-three years old and is suffering from several old aged ailments and due to his deteriorating health condition, the applicants were not in a position to contest the writ petition, being WPA No. 10294 of 2023. As such, they were completely unaware of the order passed by this Court on May 3, 2023.

However, it is clear from the application itself that even apart from the first applicant, there are two other applicants, who are the sons of the applicant no. 1. There is no explanation in the present application as to what prevented the said applicant nos. 2 and 3 from conducting the case effectively.

Moreover, it is rightly pointed out by learned counsel for the writ petitioner in WPA No. 10294 of 2023, who is the opposite party herein, that after several occasions of service of notices, the present applicants, being the private respondents in the writ petition bearing WPA No. 10294 of 2023, chose not to appear, for which the matter was decided *ex parte* in their absence.

Even apart from such factors, it is seen that the order dated May 3, 2023 was passed on merits after taking into consideration the relevant factors involved. As such, there is no scope of recalling the order dated May 3, 2023 disposing of the writ petition, being WPA No. 10294 of 2023.

Hence, CAN 1 of 2023 is dismissed.

There will be no order as to costs.

Re: **WPA No. 12043 of 2023**

The present writ petition has been filed by the applicants in the recalling application, which has been dismissed just now.

Learned counsel for the petitioners argues that after the District Magistrate's order dated December 23, 2022, on the basis of which the order sought to be recalled in the earlier matter was passed, the petitioners made two representations before the District Engineer, Southern District, CESC Limited, to shift the electricity line.

However, it is seen from the chronology of events, as rightly pointed out by learned counsel for the private respondent, that the order of this Court in WPA No. 10294 of 2023 was passed on

May 3, 2023, directing implementation of the order of the District Magistrate dated December 23, 2022. Although the petitioners seek to submit that prior to December 23, 2022, certain applications had been filed by the petitioners, the same obviously merged with the final order dated December 23, 2022 of the District Magistrate. Moreover, there is no indication in the order of the District Magistrate dated December 23, 2022 to the effect that the present writ petitioners had even pointed out the pendency of any earlier application.

After the District Magistrate's order stood final, WPA No. 10294 of 2023 was filed by the present private respondent, where the present writ petitioners were very much parties. However, the writ petitioners, despite service of notices, chose to abstain from the hearing of the writ petition when the same was ultimately taken up. Consequentially, upon consideration of the entire materials on record, the order dated May 3, 2023 was passed.

Subsequently, on May 10, 2023, the CESC Limited raised a quotation, on which date itself the present private respondent deposited such quotation amount and complied with other

formalities, upon which, in the meantime, the order dated May 3, 2023 has been implemented.

By way of the present writ petition, the writ petitioners seek to upset the apple cart after the order dated May 3, 2023 of this court has attained finality, without preferring any appeal against the said order. Both the orders-in-question, being that of the Magistrate and this Court, have since attained finality and have been implemented by the CESC Limited and the present private respondent.

At this juncture, the present writ petition is evidently a *mala fide* effort on the part of the petitioners to frustrate the process of court and the implementation of the orders of the District Magistrate as well as of this Court passed in WPA No. 10294 of 2023.

In such view of the matter, the petitioners' *mala fide* attempts cannot be given a premium by acceding to the prayers made by the petitioners. In any event, whatever contentions are sought to be raised by the petitioners are barred by the principle of *res judicata* as well as constructive *res judicata* in view of the categorical findings in the order dated May 3, 2023.

Hence, WPA No. 12043 of 2023 is dismissed on contest with costs of Rs.10,000/- payable by the petitioners to the private respondent within a fortnight from date.

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.)