

D/L. 16.
October 18, 2023
MNS

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. No. 21089 of 2023
with
C.A.N. 1 of 2023

Malabika Sarkar
Vs.
CESC Limited & Ors.

Mr. Bidyut Kumar Halder,
Mr. Indranil Halder,
Ms. Neha Singh
.... for the petitioner

Mr. Debanjan Mukherji
....for the CESC Limited

Mr. Rudradip Chowdhury,
Mr. Rahul Karmakar,
Mr. Bishwarup Acharyya
....for the intervenor

1. Learned counsel for the petitioner contends that the petitioner is in settled occupation of the property and in support of such contention cites the rent receipts annexed at page 9 of the writ petition as well as a trade licence which is also annexed to the writ petition. The petitioner has applied for electricity connection, but no such connection has yet been given as per learned counsel for the petitioner.

2. Learned counsel appearing for the CESC Limited contends that the CESC Limited could not hold an

inspection for ascertaining the feasibility of giving such connection at the premises primarily due to resistance put up by the private respondent.

3. Learned senior counsel appearing for the added respondent contends, by placing several documents annexed to the application for addition of party, which has already been disposed of, that the petitioner was never in occupation of the property and has been set up by the respondent no. 4.

4. Learned senior counsel argues that the alleged encumbrances created in the property by inducting the petitioner, even if such an action has been done by the respondent no.4, was in the teeth of restraint orders by competent civil courts.

5. The father of the respondent no. 4 had initially obtained a deemed decree under Section 4 of the Partition Act from a competent court subject to the rider that he shall not transfer, alienate or encumber the said property.

6. In palpable contravention of the same, the property was subsequently transferred by various deeds, all of which were set aside by a civil court in the year 2014. All the corresponding judgments and orders, annexed to the application for addition of party, are relied on in such context by learned senior counsel for the added respondent.

7. It is further pointed out that even as per the annexures to the writ petition, Surya Prasad Garg (Respondent no. 4), who apparently issued rent receipts in favour of the petitioner, could not have done so in 2020-2021, in view of the authority of Surya Prasad Garg having been negated in the year 2014 by the decrees setting aside the transfer deeds.

8. It is argued that the trade licence was purportedly obtained by the petitioner only in the year 2023, which is evidently an attempt to create an impression possession, where actually there is none.

9. Heard learned counsel for the parties.

10. The added respondent is justified in arguing that not only is the encumbrance created in favour of the petitioner as alleged, if at all, squarely in the teeth of the contrary decrees passed by a civil court, which would render the said induction of the petitioner, in the least, irregular, even the purported documents of possession annexed to the writ petition do not clinch the issue for the petitioner insofar as current possession is concerned.

11. As rightly argued by the added respondent, the rent receipts purportedly issued in the year 2020 and 2021 by Surya Prasad Garg were patently in contravention of the decree setting aside the transfers in favour of Surya Prasad Garg in the year 2014. Since

Surya Prasad did not have title as in 2020-2021, he could not have conveyed any right to the petitioner.

12. That apart, the trade licence obtained by the petitioner annexed to the writ petition *per se* cannot convince the court as to the 'settled occupation' of the petitioner in respect of the property, in the circumstances as indicated above.

13. Thus, in the absence of the petitioner establishing that the petitioner is in settled occupation of the property, the petitioner does not have any *locus standi* to prefer the present writ petition for alleged non-grant of electricity connection in favour of the petitioner.

14. In such view of the matter, WPA No. 21089 of 2023 is dismissed without any order as to costs.

15. 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.)

1. There will be no order as to costs.
2. 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.)