

D/L. 31.
April 19, 2023.
MNS.

WPA No. 22328 of 2022

Smt. Pritha Nandy
Vs.
Calcutta Electric Supply Corporation
and others

Ms. Kaberi Ghosh

...for the petitioner.

Mr. Suman Ghosh

...for the CESC Limited.

Mr. Sumitava Chakraborty

...for the respondent no. 5.

Mr. Biswajit Ghosh,
Mr. Bijoy Bag

...for the respondent nos. 6 and 7.

Learned counsel for the petitioner contends that the petitioner is one of the co-owners of the property. After demise of the husband of the petitioner, who was the only male member of the family, taking advantage of the mourning period after such demise, the private respondent nos. 6 and 7 applied before the CESC Limited for shifting of the electricity meter board position from its original location, which was within an eatery owned by the petitioner, to another location in the premises of the petitioner,

without any consent being given by the petitioner or any notice being served on the petitioner.

It is further argued that such shifting is patently illegal and was done without complying with all formalities, including a prior notice being given to the petitioner, who is one of the co-owners.

Learned counsel further submits that the private respondent nos. 6 and 7 claim their rights with regard to a new tenancy, which was allegedly granted to the said respondents by some of the other co-owners. However, the same is not borne out by the records. It is further submitted that a civil suit is pending at present at the behest of the petitioner, which has been filed for declaration and permanent injunction. In the said suit, a *status quo* order is subsisting at present.

It is further argued that the private respondents, in this manner, have sought to encroach upon portions of the property other than that which is included in their tenancy.

Learned counsel appearing for the CESC Limited, by placing reliance on the affidavit-in-opposition filed by the CESC Limited, categorically insists that the shifting was done as

per due process of law, upon all formalities being duly complied with by the private respondent no.6.

It is further submitted that the shifting was done solely keeping in view the insecurity of location of the meter board in its previous position where it was placed inside an eatery and there were adjacent gas burners located in the same eatery.

Learned counsel appearing for the private respondent nos. 6 and 7 submits that the respondent no. 6 is the proprietor of respondent no. 7. The said respondents are tenants with regard to two different tenancies in respect of the property, it is submitted. It is further contended that some of the co-owners inducted the private respondent nos. 6 and 7 in the said property and the said private respondents, for safety and security reasons, in order to avoid electrical and fire hazards, made the application for shifting and the same was done in due process of law.

What transpires from the submissions of the parties and the materials on record is that a civil suit is at present pending at the behest of the present petitioner. In such suit, an order of *status quo* is apparently subsisting.

Thus, the rights and disputes between the private parties, including the petitioner and private respondents, shall be decided in the civil suit and it is beyond the domain of the present writ court to enter into such disputes.

Yet, the petitioner has made a point in contending that the CESC Limited ought to have taken the consent of the petitioner, a co-owner, while shifting the location of the electricity meter. Although the allegation of non-service of prior notice is disputed by the CESC Limited, nothing has been placed before this Court to indicate that any consent was given at any point of time by the petitioner.

However, within the contemplation of the Electricity Act, 2003 (in short "2003 Act"), it is for the Distribution Licensee to ensure and take all safety and security measures for their apparatus. Thus, the Distribution Licensee, that is, the CESC Limited in the present case, is the owner of the electrical apparatus installed at the premises and is the licensee who is in charge of the safety and security relating to such apparatus and line. Hence, it has the obligation to ensure such safety and security by shifting the electrical apparatus to a safer location, if possible.

Hence, merely on such ground of no consent of one of the co-owners being taken, the said shifting itself cannot be entirely vitiated, particularly since the CESC Limited is of the specific opinion that it would be more hazardous if the meters were retained in their original position than shifted to the present one. That apart, it is the incumbent duty of the CESC Limited to ensure that safety and security from electrical hazards are maintained. Hence, such apprehension on the part of the petitioner cannot be accepted at this stage.

Inasmuch as the allegation of encroachment made by the petitioner is concerned, the same is the subject matter of the civil suit pending between the parties and it would amount to prejudging the issues involved in the suit in the writ jurisdiction, if any finding is rendered on the said contentious issue.

Hence, there is no scope of interference in the present writ petition.

However, it is made clear that all points argued by the parties, including the allegation of encroachment by the private respondent nos. 6 and 7 and the objection thereto, are kept open to be decided by the civil court.

WPA No. 22328 of 2022 is disposed of accordingly, in the light of the above observation.

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.)